Exploratory Report on Wai-128

filed by Dame Whina Cooper on behalf of

Te Rarawa ki Hokianga

July 1993

Rosemary Daamen
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Section 1

Introduction

1.1 The Writer and the Commission

My name is Rosemary Elizabeth Daamen. I am a research officer for the Waitangi Tribunal. I took up what was initially a contract position in the research section of the Waitangi Tribunal Division in April 1988. Since then, I have worked on Ngai Tahu, Te Roroa, Te Rarawa ki Hokianga, and Ngawha and Te Arawa representative geothermal resource claims.

I have a Bachelor of Arts and Post-Graduate Diploma (first class honours) in anthropology, majoring in archaeology, from Auckland (1985) and Otago (1986) universities respectively. Early in 1987 I was offered a University Grants Committee scholarship to study for a doctorate, which I did not take up. I was also one of eight nominees chosen from New Zealand for a Commonwealth PhD Scholarship to Australia that year.

I have been involved in archaeological field work at Waipoua forest, Northland, New Zealand (1985-1987) and the Arawe Islands off the south-western coast of New Britain in the Bismarck Archipelago, north-east of the Papua New Guinean mainland (1987-1988).

Although initially my work for the tribunal was more closely linked with my archaeological qualifications, it has developed to encompass a broader study of claims relating to wahi tapu, resources and late nineteenth century land histories.

In 1990 and 1991 I studied law part time at Victoria University and am continuing these studies this year.

I was commissioned by the tribunal to prepare an exploratory report on the claim made by Dame Whina Cooper on behalf of Te Rarawa ki Hokianga in which I was to:

(a) provide an overview summary of the issues contained in the claim;
(b) identify the key documentary material required to investigate the claim;
(c) prepare a document bank of this material;
(d) provide a preliminary summary of the material contained in the key documents concerning issues of the claim; and
(e) recommend any additional research which may be required to complete the examination of the issues involved.

The original object of this research was to provide a point of reference for claimant research in light of the fact that a request for urgent hearing of the claim had been declined. As the claim is very generalised and wide-ranging I could only ‘dip’ into
various aspects of the claim to present some information to satisfy this purpose in the time available for this research (see section 1.2). It was not possible to look into all aspects of the claim for this report. This was especially so of more generalised allegations, for example, that the Crown has "failed to ensure by legislation or other means the protection of [the claimants'] environment".

The overview summary of issues contained in the conclusion of this report (section 7) gives a picture of the broader issues developed from the claim which may be relevant to a wider issue- and region- based area of study.

The bulk of the report, however, is still an exploratory report, not an overview. As such, this report provides background, identifies some key documents of relevance, gives a summary of these documents, identifies areas requiring further research and suggests further official sources which may prove useful to subsequent researchers, but does not attempt to come to conclusions on all aspects of the claim. It should be used as a starting point, or base, for further research and viewed as one of the many sources of information which will come to light on this claim. I suggest most readers simply read sections 1 and 7.

The figures were drawn by Noel Harris. Any views expressed in this report are my own and not those of the Waitangi Tribunal. The tribunal, and either of the parties before it, may contest these views.

1.2 The Investigation

The research and writing of this report was largely completed over seven weeks during 1991. I was then recalled to work on the Roroa claim. A further two weeks was spent on the compilation of the record of documents and some additional writing and re-writing in 1992. My work on this claim was then temporarily set aside again, this time to research aspects of the Ngawha claim which had been granted urgency. I have spent a further three weeks completing this work in 1993. I reiterate that, taking into account the limited time spent researching and writing about the wide range of issues and time periods comprised in this claim, this report should not be regarded as anything other than an exploratory report.

An earlier draft of my report, its tables and figures and relevant supporting documents were made available to Te Rarawa ki Hokianga researchers looking into the acquisition and subsequent management of the blocks comprising the Warawara state forest. Their work, entitled "Kahukura", was with specific reference to Treaty implications and was commissioned by the Department of Conservation, on behalf of itself and Te Runanga o Te Rarawa (A9).

1 These researchers were Danny Watkins, Sheree Watkins and Graeme Freeman.
This report has been compiled from a survey of key documents mainly located in Wellington at National Archives, the Department of Survey and Land Information and the Alexander Turnbull Library, although some material was sought from the Department of Survey and Land Information at Auckland and the Department of Conservation at Whangarei and Kaikohe and obtained from Maori Land Information Office reports compiled previously for Te Rarawa ki Hokianga. Some copies of Maori Land Court minutes and block order files concerning land blocks now constituting the Warawara forest were provided to me by Te Rarawa ki Hokianga researchers working on the Department of Conservation/Runanga o Te Rarawa project.

Sources in Wellington have by no means been exhausted and there will also be much valuable information yet to be obtained both in Auckland and in Taitokerau. The tribunal will eventually depend upon local knowledge and memories of the people of Te Rarawa ki Hokianga as a major source of information. Much of this information would be given at the time of hearing. At this stage I have only briefly met a small number of Te Rarawa ki Hokianga and my research here does not have the benefit of their knowledge.

1.3 The Claim

The statement of claim submitted on behalf of Te Rarawa ki Hokianga is dated 15 May 1990. A copy of the claim is provided in document 1.1 of the record of inquiry.

In brief:

• The claimants allege that Crown agents purchased land and mountains in the Hokianga region without adequate consideration of the needs of Te Rarawa and that they failed to ensure that the owners named by the Maori Land Court held the land in trust for the iwi or hapu.

• They say that the Crown has failed to protect Te Rarawa's continued possession and use of awaawa. They state that some of these streams are tapu because of their association with traditional burial places, or as healing waters, or both. The claimants allege that the Crown has failed to ensure that they may continue to use the kaiawa. They claim that the Crown has failed to ensure, by legislation or other means, that the water quality of the streams is protected for present and future generations of their people. The claimants object to the taking of metal from the stream beds by local authorities, whom they note are empowered to do so by the Crown.
Figure 1: SOME OF THE PLACES, MOUNTAINS AND RIVERS NAMED IN THE CLAIM

Dame Whina Cooper, Eddie Kowiti, Harry Ngaropo, Joe Topia & Ben Te Wake assisted in identification of places shown on this map.
The claimants allege that the Crown has failed to ensure the protection of their environment, the land and waterways, by legislation or other means. They say that Maori lore regarding these matters is being ignored.

Te Rarawa ki Hokianga also claimed the right to the fisheries throughout the harbour along the coast and offshore.

The closing of the Sealord deal and the passing of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 changes this. Section 9 of the Act declares all claims by Maori in respect of commercial fishing to have been finally settled and the Crown's obligations discharged. The Waitangi Tribunal cannot now inquire into the validity of such claims. It can, however, look into claims concerning the non-commercial fishery.

Under s10(a) of the Act "claims by Maori in respect of non-commercial fishing for species or classes of fish, aquatic life, or seaweed that are subject to the Fisheries Act 1983" shall continue to give rise to Treaty obligations on the part of the Crown. Section 10(b) of the Act states that the minister shall consult tangata whenua about and develop policies to help recognise the use and management practices of Maori in the exercise of non-commercial fishing rights. Section 10(c) provides that the minister can recommend to the Governor-General in council that regulations pursuant to s89 of the Fisheries Act 1983 be made "to recognise and provide for customary food gathering by Maori and the special relationship between tangata whenua and those places which are of customary food gathering importance (including tauranga ika and mahinga mataita), to the extent that such food gathering is neither commercial in any way nor for pecuniary gain or trade". This is further discussed below (see pp 83,88-89,95).

The claimants state that the Hokianga harbour, mudflats and foreshore are an important source of traditional kai moana for them and feel that these places are not being adequately protected. They state that the Crown has failed through legislation or other means to protect their fisheries, and that commercial inshore and in-harbour trawling activities have depleted the toheroa stocks.

They object to the Crown claiming ownership of the mudflats under common law and by legislation.

Te Rarawa ki Hokianga question the passing of scenic reserves Tapuwae, Manuoha and Rotokakahi river to the Crown, and request that the Crown provide legal protection to ensure the continued use of these reserves by the community.
It is claimed that the land of the Waireia Development Scheme was sold "by order of the Maori Land Court" against the wishes of some of the original owners, and that its recent return to the people should not have required payment for improvements.

The claimants also questioned the actions of the Crown in returning the management of the Tapuwae Incorporation land to the people with a large debt. This aspect of the claim, also made separately in Wai 273, is now resolved.2

Te Rarawa ki Hokianga also say that the Crown has failed to protect, by legislation or other means, their wahi tapu on Crown or private land and seek assurances for such protection in future. The claimants allege that the Crown has failed to prevent the taking of sand from Tairutu and Whanui at Kahakaharoa, the landing place of Kupe, near the mouth of the Hokianga harbour.

Te Rarawa claim the coal, limestone and other mineral resources including mineral waters, in their rohe.

Finally, Te Rarawa ki Hokianga claim that the Crown has failed to assist them to develop their area and has hindered efforts to create employment by its economic policies (including cutting funds for agricultural, forestry and fishing ventures and by making cuts in essential services including banking, health, public transport and some education services).

What is sought?

Te Rarawa seek management and control of nga whenua me nga maunga claimed in conjunction with the "relevant government authorities". These are presently in Crown ownership. It was suggested that the lands be held as papatupu lands.

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2 Wai 273, made by Paul Irven White on behalf of himself, the Tapuwae 1B and 4 Incorporation and Ngai Tupoto hapu, was filed on 20 February 1992. It alleged the Crown had been negligent in its management of the incorporation's land before its return to the Maori shareholders in 1982 with outstanding debts. Discussions between the Ministry of Maori Development (Te Puni Kokiri) and the Tapuwae Incorporation in 1992-1993 led to a confidential agreement between the parties and the claimants filed a notice of discontinuance. Crown counsel informed the tribunal that the agreement was to constitute a full and final settlement of the claim. On 8 March 1993 the Chairperson of the Waitangi Tribunal reported the above to the ministers of Maori Affairs and Justice with no recommendation.

3 Presumably this is through the Post Office closures.
They seek management and control of their water resources, as well as any other such remedies as the tribunal might determine, having regard to the justice of their claim.

Te Rarawa also seek management and control of the local fisheries and spawning grounds by traditional means, for example the use of rahui, in conjunction with the relevant government agencies.

1.4 The Areas Studied: Land and Waterways

The areas studied for this exploratory report may very broadly be described as being encompassed within that area of the west coast of Te Ika a Maui between and including the Hokianga and Whangape harbours.

The precise areas specifically affected by the claim are yet to be defined and this requires further consultation with and clarification from the claimants. An indication of these areas can be gained by identifying the place names cited within the statement of claim depicted in figure 1 (see p 4).

In line with this, I have restricted the boundary of the areas studied for the purposes of this report to the above broad description, limiting it to the east by the Tapuwae and Manuoha/Motukaraka scenic reserves (excluding Motukaraka4) and north as far as the Otangaroa blocks 3 and 4 (excluding Awaroa and Mangamuiowae). Figure 2 shows this area (see p 8).

This area was chosen for convenience at this point in time. It should not be taken to represent a boundary defining the true limits of any areas affected by the claim. It may well be, for example, that in some instances the claim may involve blocks of land or places beyond this ‘imposed’ boundary. For ease in writing this report I will refer to the research-imposed boundary as the ‘research area’.5

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4 Motukaraka blocks are only mentioned in connection with the latter reserve. In general they have not been researched for this claim.

5 Some research material has been collected for areas outside the research-imposed boundary. This has not been placed on the record of documents for this claim, but will be, should further definition of the areas affected by the claim extend beyond the research area at a later date.
Figure 2: LOCATION MAP SHOWING THE 'RESEARCH AREA' FOR THIS REPORT
Section 2

The People, the Land and Aspects of Early Contact

2.1 The Tangata Whenua

The claimants have identified themselves as Te Rarawa ki Hokianga and to date have defined themselves largely by the lands with which they are associated. No doubt they will be providing their own evidence as to their traditional history and relationship with their lands, mountains, rivers and other resources. In the meantime the following is a summary of some readily available published sources on the history of the people of this area, from traditional times to the early twentieth century. It is intended that this should be commented on by the claimants, augmented with further information and the knowledge which results be made available to the tribunal.

This section relies as far as possible on those accounts which come directly from members of Te Rarawa ki Hokianga, but does not always do this. For this reason I identify the sources of the information given:

- One of the key sources of published information on Te Rarawa ki Hokianga history is Karanga Hokianga published by the Motuti Community Trust.\(^6\) This history was “recited by thirteen chiefs at a gathering at Te Karaka in 1903, when the task at hand was to address the question of land claims of the Motuti, Panguru and Waihou area”,\(^7\) a number of whom appear in the deeds of the 1870s and 1890s. Most of this publication is in Maori. Except in describing the chiefs’ residences and hapu affiliations, I have used only the passages translated into or summarised in English.

- I have taken further material from Michael King’s biography Whina,\(^8\) based on information either obtained from Dame Whina Cooper herself or on which she had no doubt been consulted.

- Thirdly, I have consulted S Percy Smith’s The Peopling of the North.\(^9\) I note that much of his information on Te Rarawa is derived from notes compiled

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\(^6\) H Tate and T Paparoa Karanga Hokianga (Kohukohu, 1986)

\(^7\) Karanga Hokianga op cit p iii. Those chiefs were Heremia Te Wake, Herewini Te Toko, Taniere Rangipaoa, Te Hira Mataika, Pauro Te Rangaihi, Wiripo Ngapera, Wiremu Rikihana, Hotene Karaka, Herepete Raphhana, Amuketi Himiona, Pire Teira, Koroweo Puhihere and Re Te Tai.

\(^8\) Michael King Whina (Auckland, 1983)

\(^9\) S P Smith The Peopling of the North (New Plymouth, 1897)
by G H Davis, a Pakeha, or from Hone Mohi Tawhai, of the Mahurehure hapu, son of Mohi Tawhai from Waima, south of the Hokianga harbour. It is also worth note that Smith was an ethologist of the late nineteenth and early twentieth centuries, and as such he sought to construct one history from differing accounts. This is evident in his comments on Te Rarawa history.

Some indication of the importance of the Hokianga in northern history is pointed to in King’s summary which records:

The Hokianga is known as Te Kohanga o Te Tai Tokerau, the nest of the northern tribes, because most trace their origins from the discovery and settlement of the harbour. The name itself is an abbreviation of Hokianga-nui-a-Kupe, the returning place of Kupe, because it was from the Hokianga Heads that the mythical navigator returned to Island Polynesia. The people who followed him and his directions a generation later returned to the Hokianga to settle. In addition to transmitting family and tribal mythology, Te Rarawa Ki Hokianga pass on the traditions of the harbour, many of which are multi-tribal and shared with Ngapuhi on the southern shore; stories about discovery and settlement, for example; and those concerning spirits and taniwha, many of which were probably inherited from pre-Te Rarawa and pre-Ngapuhi inhabitants.¹⁰

King stated that Te Rarawa:

occupied the west coast of the North Island between Kaitaia and Hokianga for at least 500 years. Its canoes are Ngatokimatawhaorua and Mamari, and the major ancestor from whom most of its members trace descent is Nukutawahiti.¹¹

Smith also recognised Te Rarawa descent from the crew of these two canoes. He recorded Kupe as having arrived in the "Matahourua" canoe,¹² but stated:

In an account of the Rarawa ancestors, in Mr. G. H. Davis’ possession, the Mata-hourua canoe is claimed as being one in which some of their ancestors came to New Zealand, but they call it Kowhao-mata-rua, and say that Nukutawahiti came here in her .... Hone Mohi Tawhai told me that Kowhao-mata-rua or Nga-mata-whaorua is the name generally given in the north to Kupe’s canoe (which is Mata-hourua in the south), and that he was not aware who were Kupe’s descendants living at Hokianga when the Mamari canoe

¹⁰ King op cit pp 18-19
¹¹ King op cit p 18
¹² Smith op cit p 13
arrived, but one of these, named Te Tahau, married Ihenga-para-awa, a descendant of Nuku-tawhiti's, as will be shown later on.13

Smith held that Nukutawhiti came in the Mamari canoe along with Ruanui. Hone Mohi Tawhai told him that Nukutawhiti and Ruanui, soon after settling at the Hokianga heads, began building two houses, one for each chief and his people. Nukutawhiti built one at Whanui, on the north side of the harbour, and named it Pouahi. Ruanui built his on the south side and called it Arai-te-uru. A dispute arose when Ruanui's house was completed first and he was not willing to wait for Nukutawhiti's to be finished before the tapu was removed.14 Tawhai noted Hokianga Ngapuhi descent from Nukutawhiti. Te Rarawa and Aupouri were noted to have descended from Ruanui.15

Smith also noted a number of other canoe traditions associated with Te Rarawa. He recorded Rongomai, of the Mahuhu canoe, to have been an ancestor common to Ngati Whatua, Ngapuhi and Te Rarawa.16 He also referred to Rarawa accounts of "Tu-moana's migration" settling at and north of Hokianga heads17 and Mirupokai and the crew of the Mataatua canoe settling at Herekino and Whangape. In the latter account, Nukutawhiti and Ruanui of the Mamari were said to be Mirupokai's offspring.18

Since the arrival of these canoes in the north, a number of important battles were fought establishing the rights of the various iwi and hapu, and a number of these were recalled by the chiefs who met at Te Karaka in 1903. Two of these battles particularly stand out: the battle of Oneroa in which Te Rarawa gained control and authority over Ahipara during Te Matangi's time19 and the battle of Te Wai o Te Kauri in 1833 at Motukauri, which ended when Mohi Tawhai brought those involved to agree that Ngati Manawa would remain on the north side of the Hokianga and Ngati Korokoro would remain in the south.20

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13 Smith op cit p 15
14 Smith op cit p 25. This legend is recalled in one of the myths and Maori legend broadcasts appearing on television in 1991.
15 Smith op cit p 21
16 Smith op cit p 3
17 Smith op cit p 11
18 Smith op cit pp 16-17
19 Karanga Hokianga op cit p 9
20 Karanga Hokianga op cit pp 17-19
Herepete Rapihana, one of the 13 chiefs who met at Te Karaka in 1903, stated that in the battles of Ahipara, including that at Oneroa, some Te Rarawa survivors returned to Hokianga while others opted to remain in Ahipara. Te Rarawa ki Hokianga are the Rarawa people of the Hokianga district.

However, in 1903, those chiefs claiming rights to the Motuti, Panguru and Waihou area, the area at the heart of the present claim, identified themselves as coming from a number of differing hapu, not all of which are currently considered Te Rarawa. While the Papatupu Committee decided that Te Reinga (who was most frequently identified in whakapapa as a descendant of Rongoma) was the key tupuna of the area, I note here the hapu affiliations of all those who made a claim to that area, and provide tribal histories where they elaborate on the two battles noted above, to give an indication of the geographical position of the hapu and iwi at various points in time. Figure 3 (see p 13), compiled from figures within Karanga Hokianga, shows most of the places mentioned below.

- Heremia Te Wake stated that he was from Te Karaka and Whakarapa and of Ngati Manawa and Ngaitupoto hapu. He recounted that during the time of Te Matangi and Irihau, Te Rarawa lived at Mataraua pa at Waihou. They fought Ngapuhi at Otupahero (Waihou no 2), where Te Pari was killed and Ngapuhi were defeated. Heremia Te Wake stated that at that time Te Rarawa were known as Te Tawhiu and that the tribal name Te Ihutai originated from this battle, although another account suggests Te Tawhiu and Te Rarawa were distinct.

Following the battle of Oneroa, Heremia Te Wake stated that Ngati Manawa returned to Waihou and Whakarapa. He recalled Hongi Hika’s attack on Mataraua pa in which Te Tihi was killed. According to Heremia, Wharetohunga was the first to return to the land after the tapu was declared

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21 Karanga Hokianga op cit p 54
22 Sometimes his descent was traced through Te Kotete back to Maui.
23 Karanga Hokianga op cit p 136
24 Karanga Hokianga op cit p 4
25 Karanga Hokianga op cit p 4
26 Karanga Hokianga op cit p 11
27 Karanga Hokianga op cit p 14. Hongi Hika had launched an unsuccessful attack on Whiria pa, then successfully attacked Hunoke pa, killing Tuohu. Te Roroa responded to this by attacking Pakinga pa (Karanga Hokianga op cit p 47), and Hongi Hika’s response was to launch a counter attack on Mataraua pa.
Figure 3: LOCAL PLACENAMES
following Te Tihi’s death. Ngati Korokoro sent someone to investigate when they saw the smoke of his fire. Disputes and small battles developed between the two people which culminated in the battle at Te Rongo o Te Taua pa at Motukauri, known as the battle of Te Wai o Te Kauri. 28

- Herewini Te Toko stated that he lived at Pupuwai, just south of Punehu. He had also lived at Tairutu, Ngarongotea (known also as Orongotea or Rongotea), Ngatuaka, Ngamahanga, Te Ruaki, Te Mataa, and Hauauru. He was of Te Patutoka hapu. 29

- Taniere Rangipaoa gave his residence as Ngakiriparauri and his hapu as Waiairiki. 30

- Te Hira Mataika stated he lived at Waihou and was of Te Whanaumoko, Te Whanaumaai and Te Rarawa hapu. 31

- Pauro Te Rangaihi said he lived at Whakarapa and Waihou and described himself as being from Ngati Manawa and Te Kaitutae hapu. 32

- Wiripo Ngapera gave his residence as Motukaraka and stated his hapu to be Ngaitupoto, Te Rarawa and Ngati Here. 33

- Wiremu Rikihana said he lived at Opanaki and was of Te Tawhiu hapu. 34

- Hotene Karaka stated that he lived at Whakarapa and was of Te Uriaranui hapu. He said that Te Rarawa left Whakarapa and Waihou for Ahipara and the battle of Waimimiha. Some of the descendants of Maruwhenua and Taimihitata remained at Waihou. At the time of the battle of Te Oneroa, Kahi, a descendant of Te Reinga, and his sisters Ngakahuwhero and Karanga Hokianga op cit pp 15-17

28  Karanga Hokianga op cit pp 15-17

29  Karanga Hokianga op cit pp 33-34. See figure 4 "Sites of old land claims in the research area" for the locations of some of these sites.

30  Karanga Hokianga op cit p 37. I believe the Ngakiriparauri mentioned here is situated by the Kai Iwi lakes.

31  Karanga Hokianga op cit p 38

32  Karanga Hokianga op cit p 40

33  Karanga Hokianga op cit p 41

34  Karanga Hokianga op cit p 43. "Opanaki" here is probably a reference to the area of that name just north of the Dargaville, above the Kaipara harbour.
Muriwhenua, lived at Rangiputa pa. Both Te Tai and Te Hira were born at this pa. As young men they were brought back to live in the Hokianga. Hotene Karaka described the tribal name Te Kaitutae resulting from a clash between Te Ngaropo and Muriwhenua.\textsuperscript{35}

- Herepete Rapihana stated he lived at Pukepoto and was of Te Uriaranui and Te Uriohina hapu. He described how Te Rarawa received its name.\textsuperscript{36}

- Amuketi Himiona gave his residence as Whangape and his hapu, Te Kaingamataa.\textsuperscript{37}

- Pire Teira said he lived at Omanaia (south Hokianga) and was of Ngati Korokoro and Ngaitupoto hapu. He claimed these hapu to have lived at Mataraua pa with their homes in Waihou, Waireia, Matamata, Ngarongotea, Wairoa and Nukupure.\textsuperscript{38}

- Koroweo Puhirere stated he lived at Waihou and Kuritapotu in Motuti and was of Ngati Te Maara hapu of Te Rarawa.\textsuperscript{39}

- Re Te Tai said he lived at Waihou and belonged to Ngati Te Reinga, Ngati Manawa and Te Kaitutae hapu of Te Rarawa.\textsuperscript{40} He stated that Ngati Manawa and Ngaitupoto returned to Waihou after the battle of Te Oneroa. The survivors of the attack on Mataraua were taken to Whangape, Herekino and Ahipara. He said that other survivors of Ngati Korokoro returned to the south and only later did they return and live at Whanui, Waireia, Waihou and Wairoa. At that time, he noted, the chiefs of Ngati Korokoro were Moetara and Rangatira.\textsuperscript{41}

As noted above, the purpose of setting out some of the key published sources in this way has been to invite claimant comment on them. It raises questions which may need to be resolved by the claimants. For example, the evidence given by the chiefs participating in the 1903 meeting, as recorded in \textit{Karanga Hokianga}, suggests that

\textit{Karanga Hokianga} op cit pp 45-48

\textit{Karanga Hokianga} op cit pp 53-54

\textit{Karanga Hokianga} op cit p 56

\textit{Karanga Hokianga} op cit p 58

\textit{Karanga Hokianga} op cit p 60

\textit{Karanga Hokianga} op cit p 63

\textit{Karanga Hokianga} op cit pp 77-79
there were hapu claiming rights in the region which are not currently considered part of Te Rarawa. Te Rarawa ki Hokianga may be able to provide further insight into this, and research based on minute book evidence may be required.

2.2 Hokianga in the Nineteenth Century

The following section is provided as general background to aspects of nineteenth century life in the Hokianga. Part of the claim made by Te Rarawa ki Hokianga is that the Crown has failed to assist them to develop their area by hindering efforts to create employment and making cuts in essential services including health, public transport and "some education services". While the wording of this aspect of the claim indicates that Te Rarawa ki Hokianga's concern regarding their present social and economic situation has more to do with twentieth century developments, it can not exclude earlier events. In order to determine the impact of Crown policies on the claimants, it is necessary to broadly examine their situation from the time of first contact. Without this it would be difficult for the tribunal to determine the extent to which the claimants' present social and economic situation may be the result of Crown actions.

While substantial research of primary material relating to the social and economic situation of Te Rarawa of Hokianga and Whangape in the nineteenth century has not been possible for this report, some indication of what the Hokianga was like in this period can be traced from a brief look at a few of the primary and secondary sources relating to this area.42

Far less appears to have been written about the Whangape harbour during this period. It seems that fewer Europeans visited or lived in that area until later. As a result this section of the report relies on descriptions of the Hokianga.

The land

2.2.1 Augustus Earle gave a somewhat romantic description of what he saw in 1827 when he first entered the Hokianga harbour, or the "river", as it was then known:

The entrance to this river is very remarkable, and can never be mistaken by mariners. On the north side, for many miles, are hills of sand, white, bleak, and barren, ending abruptly at the entrance of the river, which is about a

42 It should be stressed here that there are a number of problems with this approach. First, the Hokianga described in these sources is that seen from the viewpoint of Pakeha sources and undoubtedly does not reflect Maori thoughts and experiences. Secondly, the Hokianga most of these early settlers describe is further up 'river' than the area studied in this report and some descriptions may refer to the southern, rather than the northern, side of the harbour, although I have attempted to be selective in the material I have used in this (latter) respect.
quarter of a mile across, where the south head rises abrupt, craggy, and black, the land all around is covered with verdure; thus at the first glimpse of these heads from the sea, one is white, the other black ....

After crossing the bar, no other obstacle lay in our way; and floating gradually into a beautiful river, we soon lost sight of the sea, and were sailing up a spacious sheet of water, which became considerably wider after entering it; while majestic hills rose on either side, covered with verdure to their very summits. Looking up the river, we beheld various headlands stretching into the water, and gradually contracting its width, till they became fainter and fainter in the distance, and all was lost in the azure of the horizon.43

The main body of the Hokianga harbour extends about 25 kilometres inland. In the early half of the nineteenth century the country around the harbour entrance and along its banks was open until about half way up the harbour, although this is not always clear in the early descriptions of the Hokianga.44 The banks then became wooded on both sides and the "river" became much broader.45 R A Cruise wrote of this stretch of the Hokianga:

The river ... forms many deep coves, and branches into several streams, the banks of which are beautifully wooded, and the lofty and luxuriant cowry grows in great profusion close to the water's edge.46

It was readily apparent to early Pakeha settlers of the area that this richly aesthetic environment was also full of economic potential for them.

Early Pakeha settlement and the Hokianga market economy

2.2.2 Pakeha settlers had begun living in the Hokianga in the early 1800s, most of them "runaway sailors, whalers and convicts, and sawyers in pursuit of the district's wealth of kauri spars". Michael King noted that when European ships "began to visit the harbour for spars, timber, flax, potatoes and pork with increasing frequency from the early 1820s" most Maori communities moved to situate themselves close to the harbour "to benefit more directly from river transport and to be in a more favourable location for bartering with visiting vessels". Maori grew crops, cut and dressed flax,

43 Anthony Murray-Oliver (ed) Augustus Earle in New Zealand (Christchurch, 1968) p 137
44 Of course, inland of the shores of the harbour in this first 'half' of the length of the Hokianga, such as the area now known as the Warawara state forest, was wooded.
45 Edward Markham described this in 1834, see E H McCormick (ed) New Zealand or Recollections of It (Wellington, 1963) p 31
46 R A Cruise Journal of a Ten Months' Residence in New Zealand (London, 1824) pp 86-87
dug kauri gum to sell and joined the timber trade "felling logs, squaring them and getting them down to the harbour shore". At John Webster’s mill as many as 700 Maori were employed at a time.47 According to McCormick, as a result of the timber trade:

The Europeans ... lived not in compact communities but, of necessity, in isolated sawing stations or in a few larger ‘establishments’ dispersed throughout the river ...

At the time of Markham’s visit [1834] there were, by his own estimate, about seventy Europeans on the river. Living as they did in isolation and without support from established authority, they depended entirely on the good will - and often on the forbearance - of a native population numbering some three or four thousand.46

The majority of the early settlers lived in the upper reaches of the river, as can be seen by the old land claim records for the Hokianga as a whole. Many of these Europeans married into local Maori communities. Frederick Maning, an early Pakeha settler who became a Native Land Court judge in the Hokianga, who himself ‘married’ a Maori woman of Te Hikutu descent around 1839, wrote in 1864 that:

The state of this district, and the positions which the native and European inhabitants hold towards each other, are peculiar ... there is not one European female in the whole district ... all the settlers being married to native women or women of Maori descent, and their sons are grown up men, about fifty in number, many of whom are the acknowledged chiefs of their respective sections ...49

While Europeans may have been largely dependent on the timber trade and their Maori relations’ "forbearance" to survive in the Hokianga during these times, Maori appeared to enjoy the best of both worlds. Markham described a wide variety of traditional foods and resources used by Maori communities in the Hokianga during his visit there, including pigeons and tuis, toro toro (a creeper used as rope), toetoe, karaka, corn and fern root, turkey feathers, albatross down and sharks teeth, pipi, patiki, paua, snapper, shark and human flesh.50

47 King op cit p 22
48 McCormick op cit p 23
49 New Zealander 31 August 1864, p 3
50 McCormick op cit pp 34-39, 45-47, 71. Maori Land Court minutes, such as those of the 1870s land sales below, provide a further source of information regarding resource use.
However, King noted that:

It was not long before rum in large quantities found its way into the goods being offered; prostitution and venereal disease made their appearance at about the same time. These, along with the incidence of contagious diseases, led to problems of health and morale that Maori communities had not encountered previously, and to a sharp decline in the Maori population from the 1840s to the 1890s.51

Demography

2.2.3 It is difficult to obtain early population figures for Te Rarawa ki Hokianga. Early estimates refer to either the population of the general area,52 or the population of Te Rarawa as a whole.53

In 1909 A C Yarborough, a Pakeha resident of Kohukohu, estimated the "approximate strength of fighting men in the valley of Hokianga and in Whangape" at 1810 to total 2540 (A2:1).54 Using the Reverend J Hamlin's method of multiplying this figure by three, the editor of the Journal of the Polynesian Society in 1915 estimated a total Maori population of the Hokianga district in 1810 at 7620 (A2:2).55

As quoted above, Markham estimated there to be around 3000-4000 Maori in the Hokianga in 1834. A government estimation of the Maori population at Hokianga in 1842 was 4300 (2300 men and 2000 women). In 1843 this total had dropped to 4000 (2300 men and 1700 women) (A2:6). The figure for the population at Hokianga for 1847, 1848 and 1849 was 1900 (1400 men and 500 women).56 F D Fenton's census of the Maori population taken in the years 1857-1858 estimated the total population

51 King op cit p 22

52 If the general area is the Hokianga it obviously encompasses a larger area of the Hokianga harbour than is included within this claim and may exclude the population around the Whangape harbour.

53 Unless divided into regions or communities this would involve a larger group of people than those presently covered in this claim or it would exclude those who provided a different hapu name but would normally be considered claimants for the purposes of the claim.

54 A C Yarborough "Approximate Strength of the Maori Hapus of Hokianga, circa 1810" Journal of the Polynesian Society vol 18, no 70, p 96

55 Editor "Estimate of the Maori Population in the North Island circa 1840" Journal of the Polynesian Society vol 24, no 94, p 72

56 This is an extremely large drop in women in particular. This figure does not appear plausible, taking into account the figures for 1843 and 1857-1858.
of the Hokianga to be 2789 (1606 male, of which 317 were under 14 years of age and 1183 female, of which 252 were under 14 years) (A2:8).  

In 1870 the population of the Rarawa in the "Bay of Islands and Hokianga District" was 770 (A2:23). The Rarawa population of Hokianga in the 1874 native department census is recorded as being 729, comprised of 407 male (185 under 15) and 322 female (155 under 15) (A2:25).  

In May 1875 the resident magistrate for the Hokianga, Spencer von Sturmer, reported that a "medical man" was "much required ... but there are too few European settlers to support one unaided by Government" (A2:27). In 1875-1876 he reported that many Maori in the district had died from measles, low fever, bronchitis and diseases of the chest (A2:27-28). Von Sturmer noted in the 1876 report that Wiremu Tana Papahia, who had acted as a native assessor for the Native Land Court, had died at Whangape on 5 September 1875 of "disease of the lungs". Whooping cough claimed a number of lives in the mid-late 1870s. Tia Pakeke, another noted Te Rarawa chief, died some time in 1877-1878 (A2:29-32).  

By 1878 the Rarawa population of the Hokianga had decreased to 668, 360 male (132 under 15) and 308 female (140 under 15) (A2:30). Von Sturmer sought to explain the drop in numbers, not only with reference to epidemics and other illness, ...
but also to the fact that:

A considerable number of the young men have with their families left the district for Kaipara and Whangaroa to obtain work in the extensive kauri forests connected with the different saw-mills in the above-named places ...

(A2:29)\(^64\)

In 1879 sickness appeared less prevalent in the Maori population of the Hokianga (A2:33)\(^65\) but the following year von Sturmer reported that:

The health of the people during the past year has been very bad, and a considerable number of children and young people have died, more particularly in the neighbourhood of the Rarawa settlements at Lower Waihou, where, during September and October, upwards of twenty children were carried off by low fever, and doubtless many others would have succumbed to the malady but for the timely arrival of medical aid and comforts, supplied to them by the Government. (A2:34)\(^66\)

Despite this, in 1881 the population figures for Te Rarawa of Hokianga were recorded to be 981, 561 men (210 under 15) and 420 women (157 under 15) (A2:13).\(^67\)

From this brief look at population estimates from 1810 to 1881 it is clear that Te Rarawa ki Hokianga suffered heavily from a number of illnesses. This situation was typical of nineteenth century Maori communities. While Europeans then had much higher mortality rates from such diseases than they do today, their life expectancy was considerably higher than that of Maori. At this time there was a belief that Maori were a ‘dying race’, but by the end of the 1880s population numbers reached their nadir, and overall Maori numbers began to increase.

Birth rate, another key instrument in population dynamics, has not been considered here. Mobility, as indicated above, may have been a further cause of the downward trend in the census results and may have, conversely, had something to do with the apparent rise in population in 1881.

\(^{64}\) Resident Magistrate to Under-Secretary of the Native Department, 11 May 1878, AJHR 1878 G2 p 2

\(^{65}\) Resident Magistrate to Under-Secretary of the Native Department, 26 May 1879, AJHR 1879 I G1 p 2

\(^{66}\) Resident Magistrate to Under-Secretary of the Native Department, 7 May 1880, AJHR 1880 G4 p 2

\(^{67}\) Michael Eyes op cit p 27
Christianity

2.2.4 Christian missionaries appeared in the Hokianga in 1819. The Wesleyans established a station in the Hokianga in 1827 and the Roman Catholics in 1838. In 1837 there was one Wesleyan chapel in the research area and a number around Mangamuka and the southern coast of the Hokianga harbour (A2:37).68 However, the Roman Catholic faith soon became the strongest denomination on the north side of the harbour amongst Te Rarawa ki Hokianga.69

Old land claim records show that Bishop Jean Baptiste Pompallier was either gifted or purchased land in the Hokianga in 1839, at both Purakau, where he established a mission, and Rongotea (see p 29). There was no resident priest in the Hokianga in the 1850s but Te Rarawa ki Hokianga's relationship with the Catholic church strengthened again with the return of missionaries from 1861.70

The Catholic faith is prominent amongst the tangata whenua on the north side of the harbour today.

Native schools

2.2.5 A glance through the AJHRs of the 1870s gives some background to the establishment and success of early schools in the research area.

In December 1871 Wiremu Tana Papahia and 41 others informed the Native Minister that they consented to hand over 15 acres at Waitapu as an endowment for a school (A2:87).71 Following a meeting with the inspector of schools in March 1872, when agreement was made regarding the contribution of the government and of local Maori toward the establishment and operation of the school and the election of a committee and a teacher, the school was opened with a roll of 20 students (A2:80,88).72

A year later the school's roll had more than doubled and von Sturmer thought it "would be difficult to speak too highly of the progress made by the pupils in this

68 Sandra Coney "Man with a Mission" Southern Skies (March 1991) p 26
69 King op cit pp 23-24
71 Wi Tana Papahia and [41] others to Native Minister, 6 December 1871, AJHR 1872 F5 p 26
72 Inspector of Schools to Native Minister, 28 March 1872, AJHR 1872 F5 p 14; Resident Magistrate to Native Minister, 28 April 1873, AJHR 1873 G1 p 2
school" (A2:92,97). He reported that "[t]he Waitapu school is the theme of general conversation here, and the natives are sending their children from a great distance to attend it" (A2:100).

In 1875 the measles epidemic took its toll on school attendance at Waitapu (A2:102). In December 1875 von Sturmer noted that the comparatively small attendance at the school was owed to a number of families having moved to Whangape (A2:105).

In May 1877 Lower Waihou native school opened and it boasted a large and regular attendance. Von Sturmer recorded that the roll at this school was 50 while that at the Waitapu native school had shrunk to 15 owing to "there being very few natives residing in the neighbourhood" (A2:108-110). By 1879 he recorded a roll of 27 at Lower Waihou and 37 at Waitapu, the roll at Lower Waihou having dropped "owing to an ill-feeling having arisen between the teachers and the Chairman of the late Committee" (A2:112), although a school inspector noted the roll of both schools to be 40 at that time (A2:114). In mid-1880 von Sturmer reported:

The various Native schools in operation in this district ... are well supported by the Natives, both in the largeness and the regularity of the attendance; but I am sorry to state that the two schools at Waima and Lower Waihou are quite deserted, which is in a measure owing to the high rate of kauri gum - nearly every Native, including the women and children, being engaged in collecting it - and also, in the case of the latter school, to the number of

73 Inspector of Schools to Native Minister, 30 June 1873, AJHR 1873 G4 p 3; Resident Magistrate to Inspector of Schools, 26 May 1873, AJHR 1873 G4 p 8
74 Resident Magistrate to Inspector of Schools, 21 June 1873, AJHR 1873 G4A p 3
75 Resident Magistrate to Native Minister, 22 May 1873, AJHR 1875 G2A p 2
76 Resident Magistrate to Under-Secretary of the Native Department, 27 December 1875, AJHR 1876 G2 p 2
77 Resident Magistrate to Under-Secretary of the Native Department, 14 January 1878, AJHR 1878 G7 p 12-14. Waitapu was actually never a major settlement according to Von Sturmer. The school inspector's reports clearly stated that it was a central place chosen "as suitable to the scattered population and local jealousies of the district" (AJHR 1872 F5 p 7 (A2:78)). While it was the only school the area had, as is seen above, it was well supported with high rolls.
78 Resident Magistrate to Under-Secretary of the Native Department, 1 July 1879, AJHR 1879 II G2 p 4
79 Ponsonby Peacocke to Inspector of Schools, 28 June 1879, AJHR 1879 II G2 p 6
In 1881 von Sturmer reported that the schools were still well attended "[t]he Natives evincing great interest in them". New schools had been erected at Whangape, and neighbouring the research area, at Motukaraka (A2:119). These were followed in the research area by Whakarapa native school in 1883 and Matihetihe in 1890. There were at least five native schools in and immediately around the research area by 1895. These were at Whangape (two half-time schools), Matihetihe, Waitapu, Whakarapa and Motukaraka (A2:120). Figure 4 (see p 25) is a graph showing when native schools were operating within and immediately around the research area, comprised from the sources used above and a location guide to Maori schools produced by National Archives.

Local Maori were obviously very strong supporters of native schools in these early years. The children often travelled great distances to attend school, but sickness, migration, economic necessity and personal differences all contributed to non-attendance at specific times. From 1900 there were generally between four and seven native, later Maori, schools in operation in the immediate area at any one time. In 1969 separate state Maori schools were abolished. Those still in operation were transferred to Education Board control. I have not researched how many remained operative from that point onward.

The claimants say that the Crown has failed to assist them to develop their area, among other things by cuts in education. I believe that this, and other aspects of the claim relating to the present problems in employment and essential services, requires

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80 Resident Magistrate to Under-Secretary of the Native Department, 7 May 1880, AJHR 1880 G4 p 3

81 Resident Magistrate to Under-Secretary of the Native Department, 12 May 1881, AJHR 1881 G8 p 2

82 "Location guide to Maori schools", leaflet 7, National Archives, Wellington

83 Part plan of "Native Schools in the North Island of New Zealand" (1895) miscellaneous plan register (Auckland) G203 F1, Department of Survey and Land Information, Wellington

84 "Location guide to Maori schools", leaflet 7, National Archives, Wellington. I do not have any information regarding non-government church schools which may have been opened in the research area during this period other than some brief mention of two convent schools in the location guide to Maori schools produced by National Archives: one at Panguru and another at Pawarenga. These do not appear in figure 4 as there is no other information on them in the sources consulted other than their existence. Further information on these schools may possibly be found in the Catholic Church Diocese of Auckland Archives at Bishop's House, New Street, Ponsonby, Auckland. Written enquiries can be made of the archivist there at P O Box 47 255, Ponsonby, Auckland.
greater attention, not only in relation to the Rarawa ki Hokianga claim but in respect of the region as a whole.\textsuperscript{85}

\textbf{Figure 4: NATIVE (LATER MAORI) SCHOOLS WITHIN AND IMMEDIATELY AROUND THE RESEARCH AREA 1872–1969}

\begin{center}
\includegraphics[width=\textwidth]{figure4.png}
\end{center}

\textbf{KEY:}

1. See M1 4/675 file p51 for plan showing school site in 1925

\dashdot. Relocated

* Transferred to education board control following abolition of separate state Maori schools in 1969

Powarenga and Panguru convent schools not shown

\textsuperscript{85} Further research of this aspect of the claim could entail: a general historical summary of the provision of education in New Zealand with particular emphasis on more recent developments; and, particularly following the abolition of the native schools, consultation of education board and educational department files concerning this area held at National Archives in both Auckland and Wellington. An in-depth study of National Archives (Auckland) native school records for this area would provide further, more specific, information on attendance, success, sickness and the like.
Section 3

An Initial Picture of Crown Land Policy and Practice in Te Rarawa ki Hokianga Lands

3.1 The Claim

The claimants say that certain whenua and maunga were lost to them by sales to the Crown contrary to the promise of te tino rangatiratanga in the Treaty. They claim Crown agents actively purchased lands without giving adequate consideration to Te Rarawa’s needs. In particular they ask what the Crown policy for land purchase in Northland was in the latter part of the nineteenth century and whether this policy was contrary to the principles of the Treaty. They ask what instructions regarding price, reserves and protection of traditional food resources etc were given to Crown land purchase agents.

The claimants also allege that the Crown failed to ensure that the owners named by the Native Land Court held land in trust for the iwi or hapu. In particular they ask what provisions there were in the native land acts which protected their Treaty rights and how these were implemented.

This section of the report begins compilation of some base material on the nineteenth century land sales in the research area which could be used to substantiate or to refute the above allegations. I also provide some general background to land sales in the north during the 1870s and the key figures involved in these sales.

3.2 Old Land Claims

This section of the report provides a brief general background to pre-Treaty land transactions with Pakeha in the research area. It gives an initial indication of the level of experience Te Rarawa ki Hokianga had in land transactions prior to the Crown’s acquisition of lands in the research area.

Table 1 (pages 28 and 29) documents details of the eight old land claims identified within the research area (see A2:121-303). This is the structure upon which the following paragraphs expand.

In the 1830s a number of Europeans sought to establish their individual rights to land in the Hokianga, a small number within the research area. They ‘purchased’ land from local chiefs, mostly with payments consisting of quantities of goods (muskets, gun powder, spades, clothing, tobacco, gin etc) and less commonly with goods and a small amount of cash. Formalised deeds of sale were drawn up. Most of these
Table 1: Old land claims in the research area

<table>
<thead>
<tr>
<th>Land claim no</th>
<th>Vendor(s)</th>
<th>Purchaser(s)</th>
<th>Date of sale</th>
<th>Acreage and/or place name</th>
<th>Price</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>352</td>
<td>Waka Rongo Udu, A Tarra and A Murriou (Later vendors were Moetarara, Rangatira, Epunua, Ranga Tooa Warre, Te Rarou and E Ahiera)</td>
<td>George Nimmo, John McLean and Benjamin Nesbitt</td>
<td>23 December 1831 (further payment 20 February 1836)</td>
<td>200 acres called Motukauri</td>
<td>muskets, powder, blankets and sundry articles to the total value of £50 (further payment consisted of a boat, coat, blankets, shirts, tobacco, pipes and gin to the total value of £9 11s.)</td>
<td>The deed is written in English. It specifies that the purchasing parties will &quot;cut and fall&quot; any timber on the estate &quot;without molestation&quot; from the vendors. It is said that as a result of a fight in 1833, in which a number of chiefs were killed on the land, a further payment was made (details in brackets). Rangatira and A Tarra gave evidence to the commissioners and the claim was successful.</td>
</tr>
<tr>
<td>339</td>
<td>Papahea, Vairo, Te Taka, Iha Ihi, Ngaropo, Adua, Mulu, Ranghateera and Moetarra</td>
<td>Peter Monro</td>
<td>13 October 1835</td>
<td>600 acres called Te Mata</td>
<td>blankets, gunpowder, spades, pots, tobacco, shirts, pipes, guns, hatchets, gun flints and hoes to the value of £78</td>
<td>The deed is written in English. Although the deed specifies £78 in goods were given, a later document refers to £44 10s 8d being paid with extra paid the next day to Papahia &quot;for a Tabooed place&quot; to make it up to £48 19s 8d. Papahia and Ngaropo gave evidence to the commissioners and the claim was successful. The land was sold to Henry Hopkins on 26 July 1845. Hopkins' grant may be seen on present-day cadastral plans.</td>
</tr>
<tr>
<td>1361</td>
<td>Papahea, Tangatakitaiki and Hoohoowhari</td>
<td>Hugh Munhall and William Smith</td>
<td>29 November 1836</td>
<td>Punehu</td>
<td>gunpowder, blankets, spades, hatchets, shirts and tobacco</td>
<td>The deed is written in English. This was a so-called &quot;half-caste&quot; claim by Hugh Munhall's children. A note on OLC970 (below) dated 13 August 1872 states that the half caste children of Munhall and Campbell were entitled to 29 1/2 acres &quot;Punehu&quot;</td>
</tr>
<tr>
<td>706</td>
<td>Totarahua, Papia Nue Nue, Terewaite, Nurewi</td>
<td>James Honey (who later sold part of the land to Edward Parker)</td>
<td>1837</td>
<td>200 acres called Whanganamu</td>
<td>powder, guns, blankets, coats etc given 1837 - 1840 to the value of £72 7s</td>
<td>The deed was lost at the time the commission investigated the claim. Papahia and Totarahua gave evidence to the commissioners noting that some of the payment was made after the arrival of the governor to New Zealand. The claim was successful. In December 1859 H Tana Papahia, Te Tai, Te Hira and Te Turu requested that Bell consent to give them the land at Whanganamu &quot;because this claim is in the midst of our land&quot;. No further information was given on this file.</td>
</tr>
</tbody>
</table>
### Waitangi Tribunal Research Series: Te Karawa ki Hokianga

<table>
<thead>
<tr>
<th>#</th>
<th>Name(s)</th>
<th>代理人/见证者</th>
<th>Date (Year)</th>
<th>Acres/Value</th>
<th>Description</th>
<th>Outcome/Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>970</td>
<td>Popohea, William Turner and Ngawe</td>
<td>Robert Campbell</td>
<td>8 May 1839</td>
<td>12 acres more or less called Paengatai</td>
<td>blankets, powder, muskets, spades etc to the value of £15 11s</td>
<td>Robert Campbell did not appear or bring evidence via an agent before the commissioners following the advertisement of the hearing in the gazette, and no grant was recommended (see OLC 1361).</td>
</tr>
<tr>
<td>951-954</td>
<td>Kaumatua, Watia (Tereti), Keri and Ruru</td>
<td>Andrew Baty (Reverend RC missionary) on behalf of Jean Baptiste Pompallier</td>
<td>11 September 1839</td>
<td>150 acres called Purakau</td>
<td>shirts, pantaloons, tobacco, cloaks, frocks, £4 cash to the total value of £64</td>
<td>The deed is written in English. Watia and Kaumatua confirmed the sale and the claim was successful.</td>
</tr>
<tr>
<td>967</td>
<td>Huhu, Papahia, Tangatakoahi Anga, Raniera</td>
<td>Robert Hardiman</td>
<td>16 September 1839</td>
<td>50 acres at Ohopa creek</td>
<td>gunpowder, blankets, spades, shirts etc to the value of £14</td>
<td>The deed is written in English and claims the right to the land together with the houses, outhouses, edifices, buildings, gardens, yards, timber ways, paths, passages, waters, watercourses rights, profits, advantages, emoluments and appurtenances. Hardiman married Mairoa, daughter of Te Toko, in 1840 and had lived on the land since 1836. Hardiman did not appear before the OLC commissioners but later F D Bell ordered he receive a grant of 37 acres. Hardiman's grant may be seen on present-day cadastral plans.</td>
</tr>
<tr>
<td>952</td>
<td>Papahia</td>
<td>Bishop Jean Baptiste Pompallier</td>
<td>12 October 1839</td>
<td>8 acres called Rongotea</td>
<td>a gift to the Roman Catholic church</td>
<td>The deed is written in Maori. Papahia gave evidence to the commissioners stating that the land was a gift. This created some administrative difficulties as the commissioners were investigating early land &quot;sales&quot; only, although it was clear Papahia was happy with the arrangement. Andrew Baty, a Roman Catholic priest, also gave evidence, stating that goods to the value of £5 were paid for the land. In consideration of this evidence, the claim was successful.</td>
</tr>
</tbody>
</table>
deeds were written in English and signed by both parties, by Maori often with an "X" or sometimes with a drawing of a moko. 

Agreements such as these ceased after 14 January 1840, when Sir George Gipps, Governor-in-Chief of New South Wales, issued a proclamation in anticipation of British sovereignty, stating that the Crown would not recognise any such private land purchase from the Maori from that date on. After the Treaty had been signed, the British Crown instituted a process of investigation to look into the validity of the deeds made prior to 14 January 1840 and to recommend awards of land to European claimants if their purchases were found to be valid. European claimants were required to submit their claims to be investigated by the land claims commissioners within six months of the passing of an empowering Act.

Such 'old land claims' in the section of the Hokianga within the research area ranged from 600 acres, claimed by Peter Monro at Te Mata, to around eight acres at Rongotea claimed by Pompallier. There were no old land claims made around Whangape.

This research correlates to some degree with a map drawn in March 1858 by Rangatira Moetara, Wi Tana Papahia, Hohaia and Mangumangu in response to a request by Commissioner Bell following his visit there that year to finalise old land claim boundaries (see figure 5, p 31). According to the commissioner the request was to provide him with the boundaries of claims which were not finally adjudicated on during his recent visit. The translation of their letter read that they stated they had "assembled together respecting the land sold to the Europeans" and had "put the boundaries as they were put by us in former times when we sold the land to the Europeans" and that these were "all the lands there" (A2:281,279).

Using this information and present-day cadastral plans I have produced a figure showing the estimated locations of the eight old land claims identified in the research area (see figure 6, p 32).

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86 See OLC 1/967, National Archives, Wellington
87 See OLC 1/352, National Archives, Wellington; OLC 1/1361, National Archives, Wellington
88 OLC 1/339, National Archives, Wellington
89 OLC 1/952, National Archives, Wellington
90 As noted above, Whangape does not appear to have been occupied by European settlers until later on, and most of the settlers in the Hokianga were situated further inland 'up river' from the area presently being studied.
91 OLC 4/9, National Archives, Wellington
Figure 5: RANGATIRA MOETARA, WI TANA PAPAHIA, HOHAI AND MANGUMANGU'S MAP OF OLD LAND CLAIMS, 1858
Figure 6: SITES OF OLD LAND CLAIMS IN THE RESEARCH AREA

KEY:

1. Pompallier "Rongotea"
2. Monro "Te Mata"
3. Hardiman "Ohapa"
4. Campbell "Paengatol"
5. Munhall & Smith "Punehu"
6. Honey & Parker "Whanganamu"
7. Nimmo, McLean & Nesbitt "Motukouri"
8. Pompallier "Purakau"
Although the commissioners were given wide powers to investigate the claims in 1843, including the powers to examine the transactions in terms of Maori customary law, where Maori witnesses acknowledged the sale (that is acknowledged signing the deed and receiving the specified payments) the claim was generally accepted.\(^\text{92}\) All but one of the deeds put before the commission in the research area were confirmed by Maori signatories and considered valid by the land claims commissioners. Robert Campbell's claim, to 12 acres at Paengatai, could not be granted as he did not appear before the commissioners in person or by proxy to provide evidence of the validity of his purchase.\(^\text{93}\)

Agreements made by Maori with early settlers may have been seen by Maori as providing European purchasers, and possibly the purchaser's descendants, with the right to use of a certain area of land alongside the tangata whenua in return for a 'rent' of sorts. The agreements were perhaps not guaranteeing settlers the exclusive right to a certain area of land for ever, but may more accurately have been seen as a right to share the use of an area, the right being continually reviewed.

Living agreements such as this do not appear to have been uncommon. Payments, for example, did not necessarily begin and cease with the signing of the deed, indicating an ongoing relationship with the local hapu. There is some indication of this in the agreements which were made in the research area. The sale of Whanganamu to James Honey involved payments made over a number of years, including payments made "after the arrival of the Governor to New Zealand" (A2:184,189).\(^\text{94}\) The sale of Motukauri to George Nimmo, John McLean and Benjamin Neshbitt involved a second payment which ensued from an event which took place on the land following the time of the signing of the written deed.\(^\text{95}\)

Some of the land within the claim area was given as a gift, free of payment. Papahia willingly gave eight acres at Rongotea to Bishop Pompallier and the Roman Catholic church, although they later stated they had paid £5 for it.\(^\text{96}\) This was the only one of the old land claims within the claim area which was written in Maori.

\(^{92}\) However, Maori testimony in favour of a claimant should not be confused with Maori understanding of the meaning these deeds had to Pakeha. This requires further investigation. The deeds were often written in English and despite the sometimes elaborate moko that were drawn in recognition of them, the concepts of sale and boundary contained in them are now believed, in some areas, to often be quite different from Maori understanding of the transactions (Wai 27, T1:55-58).

\(^{93}\) OLC 1/970, National Archives, Wellington
\(^{94}\) OLC 1/706, National Archives, Wellington
\(^{95}\) OLC 1/352, National Archives, Wellington
\(^{96}\) OLC 1/952, National Archives, Wellington
Awards of land were not made to Europeans on the basis of the size of the blocks specified in the deeds, but on a formula including consideration of the purchase price, the time of purchase and the residency of the purchaser. Sometimes this calculation led to there being land ‘surplus’ to that granted to the European claimant. As the ‘surplus’ land had been ‘sold’ by the Maori it was viewed by the Crown as being free of aboriginal title and therefore as belonging to the Crown. The retention of ‘surplus land’, the difference between the land originally purchased from the Maori and the land awarded to the settler, by the Crown, became a major point of contention in some areas of the north, but it does not appear to have been an issue in the research area.

Following an award of land, a successful claimant could elect to relinquish the granted land to the Crown in return for scrip, which entitled the claimant to purchase Crown land elsewhere of the same value. I have not investigated scrip or the subsequent history of the lands exchanged to the Crown for scrip payments in this report, but note that Jack Lee recorded that "Nimmo's 200 acre Motukauri 'purchase' was exchanged for £200 scrip, as was Honey and Parker's 200 acres at Whanganamu." I have not researched whether there was any local Maori response to such transfers of ownership.

3.3 The Native Land Court

I have not attempted to summarize the Maori land legislation which has led to the claimants' allegation that the Crown has failed to ensure that the owners named by the Maori Land Court held the land in trust for the iwi or hapu. This is a topic which requires further research and comment with particular reference to both general Crown policy and legislation and the effect this has had specifically in the research area.

It is worth a brief note here that the Native Land Act 1865, and the establishment of the Native Land Court in that year, enabled any individual Maori to claim to the court for ownership of a piece of land, and following court investigation (and, assuming the claim to be successful, award of title) for the land to then be sold to whomever the individual owner wished to sell to. This radically changed previous Crown policy which, for most of the quarter-century following the Treaty, was for it to maintain preemption over all land purchase.

Alan Ward wrote of this period that:

The Maori people were consequently exposed to a thirty-year period during which a predatory horde of storekeepers, grog-sellers, surveyors, lawyers, land agents and money-lenders made advances to rival groups of Maori

claimants to land, pressed the claim of their faction in the Courts and recouped the costs in land. Rightful Maori owners could not avoid litigation and expensive surveys if false claims were put forward, since Fenton, seeking to inflate the status of the Court, insisted that judgments be based only upon evidence presented before it.

Ward was equally critical of the land court itself, stating:

It set up a body of self-proclaimed experts who had to try, and frequently failed, to interpret Maori custom.98

The passing of the 1865 Act effects the picture we can gain of the overall alienation of Te Rarawa ki Hokianga lands. While this report does look into the old land claims made by private purchasers in the research area prior to the signing of the Treaty, it does not record any sales made directly to private purchasers following the signing of the Treaty, which became possible with the 1865 Act.

If the tribunal is to question whether the needs of Te Rarawa were given adequate consideration by the Crown through their land purchase agents, the extent of any such sales will be an aspect of the claim requiring further research. I now turn to Crown acquisitions.

### 3.4 Alienation of Land to the Crown in the Nineteenth Century

Although there were some Crown purchases made in the far north between 1840 - 1865, it appears that no such purchases were made in the research area during this time, nor for the decade following it.

*Land purchase and land purchase agents in the north in the 1870s*

3.4.1 In the 1870s the Vogel administration launched a massive programme of immigration and public works, involving large scale government purchase of Maori land in the North Island. From 1872 to 1878 516,051 acres were bought north of Auckland. That was over a quarter of the total government purchase in these years.99

A number of land purchase agents were employed by the Crown to buy land from Maori. Lieutenant-Colonel Thomas McDonnell was appointed in 1872 as a land

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98 Alan Ward *A Show of Justice* (Auckland, 1973) pp 185-186

purchase agent in the north and began negotiating for land around the Hokianga.\textsuperscript{100} His progress was slow and E T Brissenden, who had been working in the Tauranga area, was transferred north in October 1873. It was Brissenden, along with interpreter and assistant C T Nelson, who conducted much of the Crown’s land purchase work in the north in this period, although McDonnell continued to be involved until February 1875. By June 1875 Brissenden had negotiated the purchase of 38 blocks comprising a total of well over 159,685 acres and an estimated 391,217 at various stages of negotiation.\textsuperscript{101} In early 1875 J W Preece was sent north to supervise the final negotiations for the backlog that had built up.

It was at the time these agents were working in the north that the first negotiations and sales of Te Rarawa ki Hokianga lands within the research area took place.

\textit{Surveys in the 1870s}

3.4.2 Generally, once the commitment to sell had been made, the next step was for the land to be surveyed. Land had to be surveyed before it could go through the court to determine ownership.\textsuperscript{102}

The period of government land purchase activity in the 1870s coincided with a major professionalisation of survey work. Following the Native Land Act 1873, surveys had to be authorised by the inspectorate of surveys, established within the Native Department in 1867, and the finished work approved.

To ease the backlog of incompleted transactions which built up in the north during 1874, it was agreed that S P Smith, Chief Assistant Inspector of Surveys, be sent north to oversee and coordinate the survey operations. Smith was based at and around Hokianga from September 1874 until June 1875. Throughout that time he worked in close communication with the land purchase officers, particularly Brissenden and McDonnell, who told him which lands were to be surveyed.\textsuperscript{103}

Once a memorial of ownership (or certificate of title) was issued, establishing the owners of the surveyed block, the sale of the block could be completed.

\textsuperscript{100} Wai 38 (Te Roroa) A3:25,29; A13:19. Extracts from the Wai 38 record of documents have not been provided in the supporting documents to this report. They are available at the Waitangi Tribunal Division, Seabridge House, 110 Featherston Street, Wellington. A copy of the Wai 38 record of documents is also held at the Dargaville Public Library.

\textsuperscript{101} Wai 38 (Te Roroa) A3:131-133; A13:19

\textsuperscript{102} In some cases in the research area ownership had already been determined.

\textsuperscript{103} Wai 38 (Te Roroa) A6:916-918, 923, 934; A13:22
Overview of Crown land purchase within the research area

3.4.3 There appears to be no Crown land purchase activity in the research area prior to 1875. There were two distinct periods of Crown land purchase from 1875. The first set of purchases occurred from June 1875 to February 1880 and are shown in table 2 (see p 38). A visual picture of land known to have been alienated to the Crown at 2 February 1880 is provided in figure 7 (see p 39). The second set of purchases occurred from October 1895 to March 1897 and these are shown in table 3 (see p 40). Figure 8 provides a picture of Crown land acquisition in the research area by 1900 (see p 41). Figures 7 and 8 should be looked at in conjunction with figure 1 of nga whenua, nga maunga me nga awaawa listed in the statement of claim as areas "claimed" (for figure 1, see p 4). The document bank attached to this report contains plans, memorials and deeds relating to the above-mentioned purchases (see A3).

There were a number of Crown purchases made in the twentieth century, however I do not discuss them at all in the present report. Most of the these purchases are included in a schedule produced by the Department of Survey and Land Information in response to a Maori Land Information Office request relating to Crown land - north Hokianga (see appendix 1, p 129). The DOC - Te Runanga o Te Rarawa report on the acquisition of land comprising the Warawara forest also covers the twentieth century period and should also be referred to (see A9).

An outline of negotiations and sales made in the research area during the 1870s

3.4.4 In the early 1870s official reports recorded the "strong and repeated assurances" of the Maori of the north of loyalty to the Crown and "good-will towards their British fellow-subjects" (A4:1-2).104 Equally as prominent in these reports was "the great desire of the whole of the Native people [in the Hokianga] for the settlement of Europeans amongst them" (A2:89; A4:7).105 In 1873 the Resident Magistrate noted that the Karuhirohi block at nearby Whirinaki was "sold by the Native owners under the idea that it would be speedily laid out in farms and settled upon" (A2:89).106 It had been assumed that once this occurred, Europeans would enter into trade with local Maori (A4:1-2).107

104 Governor G F Bowen to Earl Granville, 26 May 1870, AJHR 1871 A1 pp 1-2
105 Resident Magistrate to Native Minister, 28 April 1873, AJHR 1873 G1 p 3; see also Resident Magistrate to Under-Secretary of the Native Department, 12 May 1874, AJHR 1874 G2 p 2
106 Resident Magistrate to Native Minister, 28 April 1873, AJHR 1873 G1 p 3
107 Governor Bowen to Earl Granville, 26 May 1870, AJHR 1871 A1 pp 1-2
Table 2: Land within the research area alienated to the Crown 1875-1880

<table>
<thead>
<tr>
<th>Block name</th>
<th>Area in acres</th>
<th>Date of alienation to the Crown</th>
<th>Price</th>
<th>Names of vendors</th>
<th>Crown Land purchase agent(s)</th>
<th>Number of deed</th>
<th>Date of memorial of ownership</th>
<th>ML plan no</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kauaeoruruhwaine no 1</td>
<td>4454</td>
<td>12 June 1875</td>
<td>£278</td>
<td>Wikitera Reone, Peri Te Hhu, Reihana Paraone, Ngataierua, Reni Te Tai, Mika Hone Kingi, Tarapatiki and Wi Tana Papahia</td>
<td>Brissen-den</td>
<td>79</td>
<td>(Turton deed)</td>
<td>1 June 1875</td>
</tr>
<tr>
<td>Kauaeoruruhwaine no 2</td>
<td>2648</td>
<td>12 June 1875</td>
<td>£165</td>
<td>Wi Rikihana, Iehu Ngawaka and Te Whiu Te Haukapu</td>
<td>Brissen-den</td>
<td>80</td>
<td>(Turton deed)</td>
<td>1 June 1875</td>
</tr>
<tr>
<td>Kauaeoruruhwaine no 3</td>
<td>2158</td>
<td>12 June 1875</td>
<td>£134</td>
<td>Hone Pako, Tukapiti and Hohepa Te Tai</td>
<td>Brissen-den</td>
<td>81</td>
<td>(Turton deed)</td>
<td>1 June 1875</td>
</tr>
<tr>
<td>Te Takanga</td>
<td>1750</td>
<td>15 June 1875</td>
<td>£104</td>
<td>Wi Tana Papahia, Te Whiu Haukapu, Reni Te Tai, Winiata Tomariangi and Peri Te Hhu</td>
<td>Brissen-den</td>
<td>886</td>
<td></td>
<td>7 June 1875</td>
</tr>
<tr>
<td>Otangaroa no 1</td>
<td>1257</td>
<td>19 June 1875</td>
<td>£116</td>
<td>Tia Pakeke, Here Wheus and Peka</td>
<td>Brissen-den</td>
<td>92</td>
<td>(Turton deed)</td>
<td>17 June 1875</td>
</tr>
<tr>
<td>Otangaroa no 2</td>
<td>1718</td>
<td>19 June 1875</td>
<td>£171</td>
<td>Pauro Rangath, Wiremu Tana Papahia, Wiremu Huku, Amiria Te Tai, Herevini Te Toko, Mihaka Arapetiti, Mika Hone Kingi and Pauro Huru</td>
<td>Brissen-den</td>
<td>93</td>
<td>(Turton deed)</td>
<td>17 June 1875</td>
</tr>
<tr>
<td>Otangaroa no 3</td>
<td>4876</td>
<td>19 June 1875</td>
<td>£496</td>
<td>Wiremu Te Tai, Wirikahe, Wharetunga, Herevini Te Wake, Timoti Pupihi, Pireke Te Tekenui, Tavio Pou, Hotene Te Kanohi and Akinhi Papahia</td>
<td>Brissen-den</td>
<td>94</td>
<td>(Turton deed)</td>
<td>17 June 1875</td>
</tr>
<tr>
<td>Otangaroa no 4</td>
<td>1605</td>
<td>19 June 1875</td>
<td>£155</td>
<td>Wiremu Puriri</td>
<td>Brissen-den</td>
<td>95</td>
<td>(Turton deed)</td>
<td>17 June 1875</td>
</tr>
<tr>
<td>Ngatuaka</td>
<td>1762</td>
<td>17 November 1876</td>
<td>£170</td>
<td>Herewini Titoko, Te Whiu, Mika Te Ngarata, Tia Pakeke Te Kalika, Kaperiera Te Whiu, Reni Te Tai, Tamara Te Kouhai, Hone Tana Papahia, Miriana Tipene, Akinhi Papahia, Unakiperi, Wiremu Rikihana, Hera Rikihana, Ripeka Rikihana and Watikena Tuonui</td>
<td>Brissen-den &amp; Preece</td>
<td>947</td>
<td></td>
<td>2 November 1868</td>
</tr>
<tr>
<td>Te Takanga no 2</td>
<td>827</td>
<td>1 February 1879</td>
<td>£200</td>
<td>Iehu Ngawaka</td>
<td></td>
<td>1091</td>
<td>18 January 1879 &amp; 12 February 1879</td>
<td></td>
</tr>
<tr>
<td>Taraire</td>
<td>915</td>
<td>12 February 1879</td>
<td>£156</td>
<td>Hori Karaka Tawhiti, Nui Hare, Hone Puhiere and Ruka Huru</td>
<td>Preece</td>
<td>1092</td>
<td>as above</td>
<td></td>
</tr>
<tr>
<td>Tapuaue no 2</td>
<td>3147</td>
<td>2 February 1880</td>
<td>£670</td>
<td>Pairama Titihi, Ngarama Turupou, Wiremu Puriri, Hone Mohi Taufa, Hori Harinama, Te Wakara, Kohiparu, Ererea Rapaua, Iroriona, Te Aue Huruwai, Hone Whakarongohau, Hapakuku Noetara, Te Wairongoa, Pireke, Re Te Tai, Wi Rikihana</td>
<td>Preece</td>
<td>1112</td>
<td>as above</td>
<td></td>
</tr>
</tbody>
</table>
Figure 7: LAND ALIENATED TO THE CROWN IN THE RESEARCH AREA BETWEEN 1875–1880

Land alienated 1875–1880
### Table 3: Land within the research area alienated to the Crown 1895-1900

<table>
<thead>
<tr>
<th>Block name</th>
<th>Area in acres</th>
<th>Date of alienation to Crown</th>
<th>Price</th>
<th>Land purchase agent</th>
<th>No of deed</th>
<th>Memorial of ownership/certificate of title</th>
<th>ML plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Western portion Ototope Con 21 October 1897 this block was divided into Ototope A and B and the Crown awarded Ototope A, of 142 acres, 3 roods and 8 perches, only. This was gazetted in NZG 4 August 1898 p 1251)</td>
<td>252</td>
<td>21 October 1895</td>
<td>£37 16s</td>
<td></td>
<td>3010</td>
<td>Ototope block 28 April 1880 and 11 May 1880</td>
<td>4900A</td>
</tr>
<tr>
<td>Part Pakinga</td>
<td>2 roods</td>
<td>27 May 1896</td>
<td>5s</td>
<td></td>
<td>1996</td>
<td>Part Pakinga block 13 July 1896, Pakinga block 21 November 1873</td>
<td>2963</td>
</tr>
<tr>
<td>Tautehere</td>
<td>693</td>
<td>11 March 1897</td>
<td>£121 5s 6d</td>
<td>Preece</td>
<td>2018</td>
<td>17 November 1876</td>
<td>3465</td>
</tr>
<tr>
<td>Tapuwae no 3</td>
<td>1040</td>
<td>11 March 1897</td>
<td>£286</td>
<td>Preece</td>
<td>2021</td>
<td></td>
<td>36498</td>
</tr>
<tr>
<td>Rotokakahi A</td>
<td>7821</td>
<td>20 March 1897</td>
<td>£1955 5s</td>
<td></td>
<td>2014</td>
<td>Rotokakahi block 25 November 1873</td>
<td>2955</td>
</tr>
</tbody>
</table>
Figure 8: LAND ALIENATED TO THE CROWN IN THE RESEARCH AREA BY 1900

- Land alienated 1875-1880
- Land alienated 1895-1900

Legend:
- Land alienated 1875-1880
- Land alienated 1895-1900

Scale:
- 1 km
- 3 mi

Areas shown:
- Rotokakahi A2
  - 20 Mar 1897
- No. 4
  - 19 Jun 1875
- No. 3
  - 12 Feb 1879
- Raigaki
  - 17 Nov 1876
- Ootape A
  - 21 Oct 1895
- Ootape B
  - 15 Jun 1875
- Tautehere
  - 11 Mar 1897
- Te Tapuwea
  - No. 2
  - 2 Feb 1880

Note: The map illustrates the land alienated to the Crown in the research area by 1900.
The Crown had contemplated opening a road between the Hokianga and Whangape through "the rich and extensive district of Manga-nui-o-waе", seemingly admirably suited for settlement. The Resident Magistrate noted that Maori were anxious to see this come about "freely giving up the land when required for that purpose" (A2:88).

It was around this time that negotiations for the sale of the first blocks of Te Rarawa ki Hokianga land within the research area began. Only a bare outline of events relating to the negotiations can be given at this stage.

In July 1874 Brissenden reported he was negotiating the purchase of Ngatuaka at 2s per acre. He described the block as "[g]ood rolling country in front of [the] block, kauri at the back" (A4:17). A memorial of ownership for this block had been obtained over five and a half years earlier (see table 2, p 38).

Brissenden must have felt that progress in land purchase in the north was slow at this time. Just over a week later he suggested an additional measure be taken to encourage the chiefs of Te Rarawa, some of the "largest land owners in the North", to look more favourably on selling their lands to the government. He asked the Native Minister to expedite Heremia Te Wake's pardon in the matter of Nuku's death. He thought that "by this course the only ill feeling at present existing on the part of those natives towards the Government will be removed" (A4:17-18).

In anticipation of buying large areas of land Brissenden requested that he be paid on commission rather than salary and this was granted in October 1874, as long as every acre he purchased for the government gave them "clear and undisputed title"
While this lasted it provided him the necessary incentive to act quickly and effectively in his post.

Between 20 August 1874 and 3 November 1874 Brissenden "secured by purchase" and paid deposit on several blocks of land north of Auckland. He reported that "[n]early all of them are under survey", that the land was of mixed character and that he had attempted to select the best at the lowest price (A4:24). Included within the schedule were Kauae o Ruru Wahine, Taraire and Te Takanga. Brissenden updated this schedule on 19 December 1874, including the Otangaroa block in the list of lands "purchased". He had negotiated the purchase of this block for the 'higher' price of 2s an acre. He noted that:

I find the natives are holding land firmer than on my former visits, and show considerable disinclination to sell, owing to the opposition offered to the Government by private parties; not that many of the Europeans are real purchasers; they oppose the Government on principle ....

I have not urged the natives to sell, but, on the contrary, assume a reluctance to purchase. (A4:25)

Brissenden's next report, produced later that month, included the following figures and descriptions of lands negotiated by him from March 1874:

- Kauae o Ruru Wahine, Rikihana and others, 1s 3d per acre, £75 advanced, soil tolerably good, timbered, under survey.
- Ngatuaka, Wi Tana Papahia and others, £94 advanced, 1700 acres, soil good, part open and grassed, part valuable bush. Surveyed, and through the court.

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113 J H H St John to Brissenden, 30 October 1874, AJHR 1875 G7 p 19
114 Brissenden to Clarke, 3 November 1874, H H Turton An Epitome of Official Documents Relative to Native Affairs and Land Purchases in the North Island of New Zealand (Wellington, 1883) p 41
115 The schedule also includes a block named Rakauhongi. Rakauhongi is later noted to be another name for Otangaroa 4, however, here Rakauhongi is listed as being in the Bay of Islands. There is a block of this name in the Bay of Islands, but if the locality of the block was listed incorrectly in this instance and it is what we now know as Otangaroa 4, it should be added to the list given above. Note that petition no 168 of 1925 by Hemi Riwhi and two others, for inquiry into the alleged sale of the Otangaroa no 2 block (Lc 1 1/1925/12, National Archives, Wellington) is in reference to a block within the Bay of Islands.
116 Brissenden to Clarke, Turton's epitome op cit p 42
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• Otangaroa, Remi te Tai and others, 2s per acre, £50 advanced, Soil pretty good: timbered. Under survey.

• Te Takanga, Wi Tana Papahia and others, 1s 2d per acre, £62 advanced, soil very good in places, part bush. (A4:27-28)117

Court hearings around this time were putting pressure on local resources. The Resident Magistrate reported that while crops had been very good and "a large extent of land" had been cultivated there would be a scarcity of provisions before the end of the season "owing to the quantity of visitors from other districts attending the Land Courts and the number of native 'huis' held since the crops have been harvested" (A2:27).118

The hearing to determine ownership of Te Kauae o Ruru Wahine was held at Herds Point (Rawene) on 1 June 1875. Judge Monro presided. Rikihana, who had negotiated the sale (allegedly excluding the trees from sale, see p 52), had died. By the time the application got to court it had already been agreed that the land should be divided into three parts, described as the western (claimed by those citing Aupouri, Te Rarawa and Ngatiwairoa hapu of Te Rarawa descent), middle (claimed by those citing Hokokeha and Te Rarawa descent) and eastern (claimed by those citing Taomatui, Ngatikaha of Te Rarawa descent) portions (A3:4-19).119 The determinations of ownership were made that day (see table 2, p 38).

Six days later, on 7 June 1875, the claim for ownership of Te Takanga block was heard. Those citing Kaitutae of Te Rarawa descent claimed it and a memorial of

117 Ibid pp 44-45 Neighbouring Manganuiowae was under survey and negotiation. Brissenden believed this block to be "the best block of land in the Hokiang district". The description given in the text above should be compared with those given by Smith of blocks "under negotiation" by 12 June 1875 as follows: Te Takanga, 1675 acres, "All forest; soil good; very broken"; Otangaroa, Tunatahi and Rakauhongi, 9392 acres "All forest; soil very good. Western part broken, but the eastern, adjoining Manganuiowai, undulating, with capital soil"; and Kauae o Ruru Wahine, 9260 acres, "All forest; soil good, but very broken. Contains a valuable kauri forest" (A4:32)(Smith to Brissenden, 12 June 1875, Turton's epitome op cit p 51). By July 1875 Smith had reported to the Inspector of Surveys that Otangaroa of 9700 acres, Te Takanga of 1675 acres and Kauae o Ruru Wahine of 9200 acres described collectively as "nearly all forest; generally good land; some good kauri" had been surveyed (A4:35)(Inspector of Surveys to Native Minister, 16 July 1875, AJHR 1875 C5 p 2). Compare these with the statements made with reference to petition 63 of 1924 (see p 52).

118 Resident Magistrate to Native Minister, 18 May 1875, AJHR 1875 G1 p 4

119 Northern minute book 2, Maori Land Court, Whangarei, pp 108-117
ownership was ordered that day (A3:34-37). On 12 June 1875 the deeds of purchase for the Kauae o Ruru Wahine blocks 1, 2 and 3 were produced at a court sitting held at Waimamaku. Nelson interpreted the deed, the court explained the effect of the deed and the remaining payments of £203 7s 6d (£75 having already been paid), £140 10s (£25 having already been paid) and £109 17s 6d (£25 having already been paid) respectively, were made (A3:20).

On 15 June the Takanga deed of purchase was produced before the court held at Herds Point. Judge Monro again presided. Again Nelson interpreted and the nature and effect of the deed was "explained by [the] Court". Payment of the remaining £54 13s 9d (£50 having already been paid) was made (A3:38-39).

Two days later, on 17 June, evidence was heard as to the ownership of Otangaroa. An agreement had already been reached among those claiming rights in the block to divide it into four, and the memorials were ordered. The deeds of purchase were produced the following day. Again, they were translated by Nelson and the nature and effect of the deed was explained by the court. Payment of £108 (£8 having already been paid), £159 10s (£12 having already been paid), £466 (£30 having already been paid) and £105 4s (£50 having already been paid) respectively, was made (A3:52-58).

On 24 June 1875 Brissenden recorded his purchases: Kauae o Ruru Wahine 1, 2 and 3 at 1s 3d per acre, Otangaroa 1, 2, 3 and 4 (formerly Rakauhongi) at 2s an acre and Te Takanga at 1s 3d an acre. (Note, full payments and acreages for each block are provided in table 2, although acreages in some cases differ slightly from those recorded by Brissenden here.) Brissenden indicated the deed for Ngatuaka would be signed when the necessary funds came to hand. He noted that Taraire was under survey, ready to be brought before the court in September 1875 (A4:29-31). The Native Minister's statements of 1875 and 1876 recorded Brissenden's purchases (A4:37,39).

Northern minute book 2, Maori Land Court, Whangarei, pp 168-171
Northern minute book 2, Maori Land Court, Whangarei, p 195
Northern minute book 2, Maori Land Court, Whangarei, pp 204-205
Northern minute book 2, Maori Land Court Wangarei, pp 170-171, 218-222
Turton's epitome op cit pp 48-50
Native Minister "Statement Relative to Land Purchases, North Island" AJHR 1875 G6 p 17; Native Minister "Statement Relative to Land Purchases, North Island" AJHR 1876 G10 p 7. The acreages differ in the latter report, and in addition to the advance and full payments, the cost of "incidents" for each block (which are greater in the latter report) were noted
It seems that at least part of the land and waterways Te Rarawa ki Hokianga claim to have been theirs, and certainly the close neighbouring blocks of land to the northeast, were considered by Crown agents to be of exceptional worth. On July 1875 the Inspector of Surveys had brought the Native Minister’s attention to the blocks north of the Hokianga where there were extensive valleys:

with a soil equal to the most favoured parts of the Province.

Still, if these districts could only be opened up by cross roads from the eastern ports, their remoteness and the inconvenience of their access, would be a serious deduction from their value for settlement. But in fact, as the resources of the country are developed, the opposite will come to be the case. These new Blocks lie on a far better line of communication with one another, with Auckland, and with the extreme North, than the Eastern districts. An excellent line of road may be had from Kaihu, on the navigation of the Kaipara, through the fine plateau I have mentioned, inland of the Maunganui Bluff to Hokianga, at Herd’s Point; from opposite to that point on the north side of the harbour, an equally good line is available through the heart of the excellent Manga-nui-owai block ... (A4:34)

In June 1877, land purchase agent Preece reported "a very large extent of rich land, particularly in the Hokianga District and on towards Whangape and Victoria Valley, fit for settlement, but being covered with bush". He suggested Canadians or Nova Scotians be settled there to fell the timber leaving:

extremely rich land, adjacent to or within easy reach of a magnificent harbour, abounding with all kinds of fish during every season of the year. The climate is genial, and at the same time capable of producing in the valleys most tropical fruits. (A4:43)

The land he particularly referred to included Otangaroa (which had by this time been purchased by the Crown for 2s an acre) and neighbouring Manganuioiwaes.

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126 Inspector of Surveys to Native Minister, 16 July 1875, AJHR 1875 C5 p 1
127 Preece to Under-Secretary of the Native Department, 26 June 1877, AJHR 1877 G7 p 3
128 Ibid. He felt that "[i]n order to make these blocks more valuable, it is desirable to acquire the portion of land between Manganuiowae Block and the Hokianga harbour; this land is now under negotiation for purchase, and is named ... Motukaraka and Tapuwae. There is some difficulty connected with the purchase of these blocks, but I believe I will be able to overcome them in time, and get the consent of all the parties interested; but I can do little or nothing until the Court sits to determine the ownership of Motukaraka Block, which is the greatest proportion of the whole".
Preece recorded in an attached chart that Ngatuaka was purchased for £170 on 17 November 1876. He described it as "[g]ood land, fronting Hokianga harbour".\textsuperscript{129} Taraire (915 acres) had been "purchased" for £106 15s, with £50 having already been paid, and was awaiting title adjudication. Tautehere (693 acres), "purchased" for £104, had its memorial ordered, and was awaiting the consent of some of the parties and survey of adjoining lands.\textsuperscript{130} Along with neighbouring Motukaraka and Tapuwae, these three blocks were described as "[s]oil good, undulating; light forest", "[f]it for settlers used to bush-clearing" (A4:44-46).\textsuperscript{131}

In 1878 a summary of "purchases" made included £100 having been paid on Te Tapuwae and Motukaraka jointly. The gazette of 13 June 1878 notified the above negotiations under the Government Native Land Purchases Act 1877 (A4:49).\textsuperscript{132}

On 1 February 1879 Te Takanga no 2 was purchased, Taraire was purchased on 12 February 1879 and on 2 February 1880 Tapuwae no 2 was purchased.

It appears that local Maori expectations of benefits from European settlement and trade, following land purchases, were not met. In May 1876 von Sturmer reported that Maori in the Hokianga:

> continued to express great anxiety for the introduction of European settlers amongst them, and repeatedly ask me why, the Government having lately purchased such large blocks of land, settlers have not been placed upon them, stating that one of their motives for selling was to cause an increase of Europeans in the district, and so enhance the value of the lands still remaining in their possession. (A2:28)\textsuperscript{133}

In 1879 von Sturmer again reported that:

> There is one point which the Natives here are constantly impressing upon me, and that is that in former years when they sold large blocks of land to the Government it was held out, as an inducement to sell, that Europeans would settle amongst them: this, they say, has not taken place, and they are now most anxious that a portion of the purchased lands which are of first-class

\textsuperscript{129} Preece to Under-Secretary of the Native Department, 26 June 1877, AJHR 1877 G7 p 4

\textsuperscript{130} In fact a memorial of ownership for Tautehere had been ordered by the court on 17 November 1876 and this block was not purchased until 11 March 1897.

\textsuperscript{131} Preece to Under-Secretary of the Native Department, 26 June 1877, AJHR 1877 G7 p 6

\textsuperscript{132} NZG 13 June 1878 p 56; AJHR 1878 G4 p 9

\textsuperscript{133} Resident Magistrate to Under-Secretary of the Native Department, 11 May 1876, AJHR 1876 G1 p 19
quality, though rather broken, should be set aside for special settlement, and the promise made by the agents of the Government who purchased the land fulfilled. (A2:33)

By May 1880 this eagerness to have Europeans settle in the area had dissipated. Von Sturmer recorded that:

A feeling of sullenness and distrust of Europeans appears to be spreading amongst them [local Maori], which may in a measure be accounted for, or occasioned by, a knowledge that their former power and influence as a people is rapidly passing away, seeing, as they do, the steady increase in numbers and prosperity of the Europeans around them, and their own falling-off both in numbers and territorial wealth. And some of the leading men amongst them have openly said that they would do their utmost to prevent any more lands being sold, either to the Government or to private purchasers. (A2:34)

At this time there was a lull in the purchase of land within the research area, no doubt also related to the drying up of land purchase funds. Crown purchasing did not resume again until 1895.

A number of points can already be made from the above information:

- Local Maori frequently expressed their desire for local European settlement in the 1870s because they expected a number of (largely economic) benefits would ensue from this settlement and the sale of land was understood and impressed upon them by Crown agents to be a means of bringing this about. By 1880 there was a stark change in this attitude in the Hokianga with the realisation that their earlier beliefs had not been well founded.

- Local Maori were very much tied up with land court sittings in the mid-1870s. Attendance was necessary to ensure one’s interests were protected. The Resident Magistrate noted the strain this had on food reserves as local Maori hosted relatives attending sittings away from their own residences.

- Brissenden, according to a statement made to his employers, had attempted to buy the best quality land at the lowest price. While he worked on commission he also had a personal incentive to buy as much land as possible as quickly as possible.

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134 Resident Magistrate to Under-Secretary of the Native Department, 26 May 1879, AJHR 1879 I G1 p 2

135 Resident Magistrate to Under-Secretary of the Native Department, 7 May 1880, AJHR 1880 G4 p 2
In the 1870s land purchase negotiations in the research area, payments for land were made by Crown land purchase agents to Maori prior to the authorisation of a deed. This practice of making advance payments, sometimes called 'tamana', has been described in the *Roroa* report as "an established pressure tactic, an unfair practice ... incompatible with the Crown's fiduciary duty under the Treaty".136

Between June 1875 and February 1880 at least 27,117 acres of Te Rarawa ki Hokianga's land was purchased for the Crown. At least a further 9696 acres was purchased for the Crown between October 1895 and March 1897.

The general points above appear to be common to many of the purchases throughout the Hokianga during this period.

*The 1890s purchases: recent general comment*

The 1890s Crown land purchases in the research area are summarised in table 3 (see p 40).

General information relating to Crown land purchase and land purchase agents in the area in 1870s, compiled for the *Roroa* claim, has been useful in this report. Further research needs to be done to clarify the legal framework and government policies and practices by which Maori land was acquired in the 1890s, as well as the local socio-economic situation of Te Rarawa ki Hokianga in that period and in the earlier decade, to provide a background to the second phase of land acquisition in the area encompassed by the claim.

Recent study of this 'second' period of general Crown land purchase by Tom Brooking has led him to conclude that:

The occupation and colonization of the North Island of New Zealand was advanced considerably between 1891 and 1911 by the Liberal government's purchase of some 3.1 million acres of Maori land ... acquired for an average price of 6s 4d an acre. In direct contrast a mere 1.3 million acres was made available by the break-up of the great estates under the Lands for Settlement scheme at an average price of 84 shillings an acre. Most of the Maori land was actually acquired in the 1890s (2.7 million acres by the state and about 400,000 by private individuals), despite the determined and vociferous opposition of Kotahitanga, Kingitanga and all the Maori MPs other than James Carroll. This penultimate grab of farmable Maori land ensured that most first class land had passed from Maori hands by 1900. (A4:50)137

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136 "Te Roroa Report 1992" (Wai 38) 5 WTR (Wellington) p 72

137 Tom Brooking '"Busting Up' the Greatest Estate of All. Liberal Maori Land Policy, 1891-1911" *The New Zealand Journal of History* vol 26, no 1, 1992, p 78
Brooking continued:

The Liberals were able to acquire so much Maori land so quickly because they passed a range of legislation which locked together like the pieces of a meccano set. Numerous acts were placed on the statute books and appeared to be discrete entities until they were consolidated under the voluminous 1909 Native Land Act. In combination this legislation accelerated noticeably the rate of Maori land sales, which had been slow for some time. (A4:51-52)

A picture of the amount of Maori land left in the region by 1907 could be gained through the records of the Commission on Native Lands and Native Land Tenure, although I have not been able to study their findings in detail here. Commissioners Apirana Ngata and Sir Robert Stout examined Maori land which was considered to be not profitably occupied and recommend how that land could be utilised in the interests of the Maori owners and the public.

In June 1908 the commissioners reported that they had sat at Kohukohu and Ngarongotea, and although their general remarks on the Hokianga county include blocks both to the north and the south of the harbour, they provide schedules detailing their recommendations for specific blocks of land. The schedules are of: land under lease or negotiation of lease, lands recommended to be reserved for Maori occupation, land to be leased to Maori, land recommended for general settlement and land recommended for sale. A map of these blocks and the commission’s proposals for their use would be helpful.

The minutes of the Stout-Ngata commission hearings concerning Te Rarawa ki

138 Brooking op cit pp 81-82

139 See "Schedule of Native lands north of Auckland" for the Hokianga county in Under-Secretary of the Department of Lands, Wellington to Secretary of the Native Land Commission, Rotorua, 23 December 1907, MA 78/6, National Archives, Wellington. See also Hone Heke to Sir Robert Stout, Chairman of the Native Land Commission, 18 June 1907 MA 78/6, National Archives, Wellington for his summary of northern Maori reaction to the loss of land by the late nineteenth to early twentieth centuries and suggestions as to what should be done with Maori land in the north.


141 Commissioners, Native Land Commission, Rotorua to the Governor, 10 June 1908, MA 78/19, National Archives, Wellington
Hokianga lands would also provide further information. These will give a picture of what the tangata whenua requested be done with their land.

**Concluding comments on Crown land purchase in the research area in the nineteenth century**

3.4.6 The purpose of outlining these transactions was to begin to provide some basic material relevant to answering some of the questions relating to nga whenua me nga maunga in the statement of claim. The above section does not, and could not in the time available, add a great deal to our knowledge of whether the methods of land acquisition used by the Crown agents were improper or were lacking in adequate consideration of the needs of Te Rarawa, in contravention of the Treaty.

Maori Land Court minutes and further study of National Archives records will shed more light on these transactions. I have not attempted to do this for this study. Already it is clear that aspects of the 1870s purchases are applicable to the region as a whole. Further work on the negotiations themselves is needed, in particular the acquisitions of the 1890s.

**Petitions to Parliament regarding land sales of this period**

3.4.7 A further indication of the tangata whenua's expectations in these early and later sales is the petitions to Parliament. The following petitions regarding sales to the Crown were sent to Parliament in the 1920s once it became clear to the sellers that what they believed had been agreed to, was not adhered to by the Crown.

(a) **Petition 63 of 1924 concerning Kauae o Ruru Wahine**

In 1924 Tamaho Maika and others sent a petition to Parliament regarding the sale of Te Kauae o Ruru Wahine blocks. The petition stated that the price paid for the blocks did not reflect the value of the timber on them and it sought pecuniary compensation (A4:150-151). Late that year the Native Affairs Committee referred the petition to government, which in turn referred it to the Native Land Court for inquiry and report under s45 of the Native Land Amendment and Native Land Claims Adjustment Act 1924 (A4:125-129). The court sat on 30 April and 1 May 1925 at Opononi, with Judge F O V Acheson presiding. J J Sullivan appeared for the petitioners and R J Knight appeared for the Crown.

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142 See also MA 78 series, National Archives, Wellington, in particular MA 78/5 (minutes), 78/6 (books of evidence and papers relating to North Auckland) and 78/19 (papers relating to Tokerau).

143 Tamaho Maika and others to the honourable speaker and honourable members, nd, petition 63/24, ND 1926/386, National Archives, Wellington. Re Te Tai Papahia wrote a number of times claiming that he did not sell his interests in the Kauae o Ruru Wahine block to the Crown during 1924 however he was informed that it was "too late to go into the question of who signed the deeds" (see A4:130-137,144-146).
Sullivan produced witnesses\textsuperscript{144} who claimed that Charles Nelson (whom the petitioners understood to be a Crown land purchase agent)\textsuperscript{145} had negotiated for the purchase of the Kauae o Ruru Wahine blocks at Taikarawa in December 1873. They stated that Nelson had agreed with their chief, Rikihana, that the land only, not the timber within these blocks, would be sold, and that their people relied on this agreement when they signed the deeds. Sullivan argued that Nelson had acted fraudulently in not informing his superiors about the agreement. He produced evidence that the petitioners continued to exercise their rights over the timber after the 1875 sale, taking timber to build churches, whare and fences, and for canoes. He stated they also continued to dig gum on the land (A4:152-161,115-116).

In their evidence, the witnesses referred to an earlier petition made around 1890 on behalf of Herewini (or Herewine) Te Toka by the local Maori Member of Parliament, Mutu Kapa, in support of their present claim (A4:155,158,116). This appears to be the petition sent to Parliament in protest about the Crown granting a gum-bleeding licence to G K Dysart (see pp 61,62).

Knight argued that Nelson was only an interpreter for the land purchase department and that neither Nelson nor even any purchase officer would have the authority to purchase land without timber (A4:116). He stated that no mention had been made to the Maori Land Court judge at the time of signing of the deeds about an agreement regarding the timber, that there had been no subsequent protest and that the petition did not mention the agreement. He claimed that no allegations of fraud had arisen regarding other, similar purchases made in the same area at the same time, that the timber was of practically no milling value at the time of sale because of its inaccessibility and that the royalty for easily accessible kauri was very low in 1875 (A4:116-117,161-167).

Acheson was not impressed by Sullivan’s arguments. He noted that the witnesses admitted that no mention was made of the agreement to the land court judge at the time of signing of the deeds. He noted also, as had Crown counsel, that the present petition did not make reference to any agreement to reserve the timber from the sale, nor did it mention fraud by Nelson, nor that Nelson was an agent of the Crown. He did not think Sullivan’s arguments regarding the quality and value of the timber on the block at the time of hearing were sufficient to support the petitioners’ claim that

\textsuperscript{144} They were Wiremu Rikihana (who was 24 years old at the time of negotiation and the alleged agreement in 1873), Matiu Wiripo (who was around 30 years old in 1873) and Tamaho Maika (Andrew McMath). See typed minutes of the 1925 inquiry into petition 63/24 made by Tamaho Maika and others concerning Te Kauae o Ruru Wahine provided by Helen Adams (A4:152-168).

\textsuperscript{145} As noted above, Charles Nelson often assisted with land purchase negotiations for the Crown, but was employed as an interpreter. In this instance it appears that he was assisting Preece.
the price paid for the block in 1875 was inadequate and warranting compensation. And he questioned the lack of protest between 1890 and 1921 "when the present petition was put under way" (A4:116-118).

Acheson felt that two of the petitioners’ witnesses were of "practically no value" to them. He thought that the evidence given by Wiremu Rikihana, evidence given by a man only young at the time of the negotiations and therefore not intimately involved in the proceedings, may merely have indicated the likelihood that there was "an understanding that, if the purchase went through, the Crown would not debar the Natives from taking a bit of timber off the block" (A4:116,118).146

Acheson found that the price paid for the blocks was:

only slightly lower than the average price (about 1/5d per acre) paid by the Crown for areas in the same district totalling about 140,000 acres purchased during the years 1875 to 1877, many of which areas contained large forests of kauri and other timber. (A4:117)147

He agreed with Crown counsel that the milling value of the block would have been practically nothing. He decided the petitioners had no valid claim for compensation either in respect of any alleged fraud or of inadequacy of purchase price. Acheson found it impossible to believe that:

any body of Natives could know about a reservation of timber made in 1875, and yet stand tamely by and make no claim until the actual Court hearing at Opononi on the 30th April 1924. (A4:117)148

He was, however, sympathetic to the "the general position in which the Hokianga Natives now find themselves as the result of the huge sales made by their elders to the Crown some 50 years ago" and understood that "[i]t is natural for the Natives to feel a little sore over the bargain made by their elders in 1875" seeing the value given the kauri by the 1920s (A4:118).

The report and the subsequent recommendation by the chief judge that "no further

146 Judge Acheson, decision on petition 63/24 regarding Te Kauae o Ruru Wahine block, 1 May 1925, ND 1926/386, National Archives, Wellington

147 Ibid. See also Wai 38 record of documents for prices of other kauri blocks and comment about prices paid for inaccessible blocks.

148 Ibid
action be taken was presented to Parliament on 29 July 1926, forwarded to the Native Affairs Committee, referred to government for consideration on 3 September, and published (A4:107,169-171).

(b) Petition 238 of 1925 concerning Waireia D block

In 1925 petition no 238 by Hone Te Tai and 28 others was filed regarding the Waireia D block of 4351 acres "for compensation for loss incurred through a false report by a Government Valuer as to timber on land". The petitioners stated that at a meeting of owners held to discuss the sale of the block it had been agreed that the owners should be paid a separate sum for the timber growing on the land after a special valuation of the timber had been obtained. The valuer found that there was no marketable timber on the land and the petitioners disputed this (A4:175-182).

The petitioners asked for, and the court held: (a) a full inquiry into the circumstances surrounding the sale of Waireia D block, (b) a particular inquiry into the timber valuation made by government valuer J E Wells on that block and (c) an inquiry to ascertain the current value of the timber at the time of the sale in 1914 (A4:179,197).

Despite the Under Secretary of the Native Department claiming that Wells's report was correct at the time and that an "abnormal" rise in the price of timber in 1916 had led the petitioners to form their then current (and according to the under-secretary unwarranted) views, the petition was referred to the government for inquiry

149 See chief judge to Native Minister, 28 May 1925, ND 1926/386, National Archives, Wellington.

150 See AJHR 1926 G6A pp 1-3. I have not followed this further to date. Helen Adams, a land researcher employed by the Pawarenga Community Trust, presented a summary of this with some additional information in a letter she wrote to the tribunal in February of 1988. Her letter is included in the document bank (A4:172-174).

151 They were Hone Te Tai, Amiria Te Tai, Hori Harimana, Takuira Teihi, Ngakuru Pene, Mane Hotere, Heta Rawiti, Wiremu Tahanan, Atiria Hotere, Maruai Te Waha, Maraea Ngakuru, Hone Teihi, Hami Wimutu, Paketi Peita, Aperahama Teorikena, Pateriki Paaka, Kepa Paaka, Mihi Wi Hone, Kehira Mataika, Kanara Topia, Materoa Teihi, Pakete Waitai, Matiu Witana, Eru Witana, Penetana Tetai, Rawi Peita, Henare Matiri and Himione Kamira.

152 1925 Native Affairs Committee record book, index no 71, Le 1/1925/12a, National Archives, Wellington; Petition 238 of 1925, Le 1/1925/12, National Archives, Wellington

153 Judge Acheson to chief judge, nd, Waireia block order file, Maori Land Court, Whangarei. This appears to be a typed copy of Hokianga minute book 9 pp 257-275.
on 25 August 1926 (A4:176-177). 154

Judge Acheson heard evidence relating to this petition on 23 April 1928 and 15 and 16 May 1930. He found a number of irregularities in both the timber valuation and the sale itself.

Acheson found that at a meeting of owners held on 23 February 1914, organised by the Tokerau District Maori Land Board to determine whether the land should be sold at 25s an acre, it was agreed by resolution of the owners, as a condition of the sale going ahead, that a special valuation of the timber should be made and a separate sum paid for it. This important condition of the sale was left out of the official report made by the chairman of the meeting, H S King, a clerk of the board (A4:195-196). In addition, Government Valuer Wells had estimated the value of the timber to be nil. He made only a brief visit to the block, did not go over the entire block and was accompanied by an agent of the purchasers but not a representative of the vendors. The judge adjudicating the land court proceedings for the sale, Judge Wilson, similarly visited briefly and with an agent of the purchasers, in the absence of a representative of the vendors. Evidence given at the Acheson inquiry showed that at the time of Wells' inspection of Waireia block, March 1914, there would have been approximately 4,454,638 feet of easily workable timber of a marketable quality in easily accessible localities on the block (A4:196-201).

The Tokerau District Maori Land Board (for which Judge Wilson was then president) confirmed the sale of the Waireia D block on 4 July 1914, disregarding the express condition that the timber be separately valued and paid for, despite knowing of the existence of this condition and the purchasers' agreement to it. In Acheson's opinion the board had a duty to protect the interests of the Maori owners with regard to payment of the timber and no moral right and a "very doubtful" legal right, if any, to "over-ride the express wishes of the Natives or to disregard an essential term of the conditions upon which they agreed to sell" (A4:201). 156

As well, in a recalculation of the votes taken at the meeting of owners, Acheson

154 Petition 238 of 1925, Le 1/1925/12, National Archives, Wellington

155 This person was in fact one of the purchasers. The purchasers were J M Robb, H Martindale, W A Scott and the Public Trustee.

156 Petition 238 of 1925, Le 1/1925/12, National Archives, Wellington. Acheson suggested the argument regarding the board's legal power may revolve around s356(6) of the Native Land Act 1909 which held that "On the confirmation of any such resolution the Board shall become the agent of the owners to execute an instrument of alienation in accordance with the terms of the resolution as so confirmed". Acheson questioned whether the board considered that the confirmation of the resolution was made by the board, while the passing of the resolution was made by the owners at the meeting, the former being the relevant action referred to in the 1909 Act.
found that the Maori owners had not resolved to sell at all. Four owners had requested that only a part of their shares be sold, yet this was not complied with in the formal report compiled by the board's clerk, although it was noted in a "schedule of shares in favour of the sale" attached to the detailed report he submitted to the president. But the board did not instruct its clerk to amend the lists, nor did it reserve from the sale the shares of those who had expressed a desire to retain their shares, partition off interests of the non-sellers or conserve the rights of the absentee owners who wrote to object to the sale. Acheson concluded that:

No Maori Land Board should have so abused its powers under Part XVIII of the Native Land Act 1909 as to force a very substantial minority (in reality a substantial majority) of owners to part with their land against their expressed wishes. (A4:203)\(^{157}\)

Acheson noted that of the 88 votes for the sale 56 were by proxy, while of the 112 votes against the sale only two were by proxy. He concluded that a more than three to one majority of the numbers of owners at the meeting were against the sale. All in all he felt it "difficult to imagine any judicial action more extraordinary". He questioned the reliability of voting by proxy, noting that "[v]ery strong objections to many of the proxies were made to the Board and to the Court in 1914". He also queried the chairman's advice to "the Natives present" not to answer the question put to them: whether any of the owners had received money on account of the sale prior to the meeting (A4:203-204).

A number of other actions taken by the board were queried by Acheson:

- Wilson awarded an extra 11 acres, valued at 20s an acre, to the purchaser for launch hire for the court's inspection and Wells' fees in assisting the court. So, Acheson concluded, the tangata whenua were made to pay for an inspection which they were not invited to attend and for a valuer whose evidence in court was "certainly unreliable and possibly dishonest" (A4:204).

- Wilson also reduced the board's commission on the purchase money and the board refunded additional money to the purchasers. £87 1s 10d was deducted from the purchase money and awarded to Kahi Tipene for "improvements" (the assessed value of which was "nil" in Wells' report) although no direction for this was given by the meeting of owners at the time of confirmation of the resolution.

- In May 1915 £74 was paid by the board out of the purchase money for survey charges "due by the Te Peke and Pupuwai Natives", despite a prior agreement that the purchasers would pay any deficiency in survey charges "over and above an amount already collected by the Natives". Acheson also

\(^{157}\) Petition 238 of 1925, Le 1/1925/12, National Archives, Wellington
noted that £51 3s 4d was paid by the board for survey costs out of the purchase money in October 1914 (A4:204-205).

- Acheson found that many Maori were left landless following the sale of Waireia. He stated that under s349 of the Native Land Act 1909 the board had a duty "to decide" whether any of the owners would become landless as a result of the sale and to partition off and reserve from the sale the interest of those people (A4:205). Acheson noted with astonishment Judge Wilson’s opinion that:

  cutting out the interests of non sellers would have been contrary to the public interest and to the interests of the Native owners themselves ... it is certain they (the Natives) never could develop Waireia to any extent, and to cut out a considerable area for them would be to give them the benefits of any unearned increment due to the labour of the purchaser. (A4:205)

- In addition to this, a number of "unusual facilities" granted by the board to the purchaser or his agent were also noted by Acheson (see A4:206). He noted that many of the Waireia non-sellers refused "for quite a long time" to accept purchase money from the board in objection to the sale. Wilson responded to this by refusing to allow other payments to be made to these people unless they had first accepted their Waireia money.

Acheson felt that the petitioners had, since the 1914 sale of Waireia:

endeavoured continuously, and in every way open to them, to secure redress. They have moved through the Board, the Court, the Minister, and through Parliament. They have not in any way slept on their rights.

They have "kept their Waireia fires burning". (A4:206-207)

He suggested that they receive substantial compensation and made a number of recommendations (A4:207). A report on this petition was presented to Parliament in 1932 and referred to the government for consideration on 2 March 1933 (A4:99).

158 Ibid
159 Ibid
160 Ibid
161 R N Jones, under-secretary to J J Sullivan, 1 May 1933, ND 1926/386, National Archives, Wellington
While no further tribunal research has been done on this petition, claimant research has concluded that:

The sale of Waireia D has over the years been subject to numerous grievances by Maori, finally culminating in the return of the land, on 3 July 1987, to a Trust representing descendants of the tupuna Tarutaru, Ihengaiti, and Ngono, descendants of the original owners named by the court in 1914. Part of Waireia D (including the maunga Tauwhare) was transferred to the New Zealand Forest Service in 1957. This was an interdepartmental sale from the Maori Affairs. The Forest Service paid 900 pounds for it. At the time that Waireia D was vested in the Trust, the Court recognised that the part transferred to the Forest Service in 1957 may become subject to a future claim. (A9:101)162

A number of questions arise from the these petitions. Why were these petitions, notably both relating to separate payment for timber, made in the mid-1920s? What happened around this time to lead the tangata whenua to complain? Why was Acheson uncharacteristically uncompromising in his judgment on the Kauae o Ruru Wahine petition? Does the recognition of the separation of payment for the land and the timber in Waireia D put a new light on the claim to the separation of the land and trees in Kauae o Ruru Wahine?

It often occurs that while the particulars of a claim are not known by the claimants, the essence of the grievance is felt by them and given voice to. For example, while the petitioners identified the "false valuation" of the trees to be the issue in Waireia, the existence of a separate agreement for the trees was equally relevant. In addition Acheson also found a multitude of "irregularities" in the sale of this block. The particulars of the grievances in Kauae o Ruru Wahine may require further investigation.

162 "Kahukura" DOC and Te Runanga o Te Rarawa, Te Runanga o Te Rarawa, Kaitaia, p 101
3.5 State Forest Development

The claim

3.5.1 A large area of the land described as nga whenua me nga maunga bought by the Crown from Te Rarawa ki Hokianga, which the claimants say was purchased contrary to the promise of te tino rangatiratanga in the Treaty, without adequate consideration of Te Rarawa's needs, comprises what is now the Warawara state forest. Therefore the purchase of this land and the subsequent exclusion of the tangata whenua from the state forest and its resources is of key importance to the claim. Forest service policy is also relevant to the claim in that the claimants allege that the Crown has failed to assist Te Rarawa to develop their area and that it has hindered efforts to create employment.

Material on land acquisition, forest management and local Maori response to this management is given here as background information to the claim.

Summary of documents identified to date

3.5.2 Four key documents have been found to date which will be of use to researchers of this claim in relation to the Warawara forest. These are files F1 6/1/6 vol 1, F1 6/1/6 vol 2 and MA 5/5/46 held at National Archives in Wellington and the information held by the Maori Land Information Office at Whangarei regarding the Warawara state forest. Relevant pages of these documents are produced in the document bank (A4:212-480; A5:1-153).

In addition to these files, the Rarawa ki Hokianga research team's report on the Warawara forest should be consulted (A9). Land court minutes of proceedings, which record extensive traditional use of these areas, should also be referred to. For example, those included in the document bank already indicate use of kiwi, "birds", rats, and fern root on Kauae o Ruru Wahine (A3:5_10);163 kiwi, rats and pigeons on Te Takanga (A3:34);164 and kiwi, rats and taiko (black petrel) with "ruhi" cultivations, as well as pig and cattle runs, on Otangaroa 2 and 3 (A3:55).165

Crown acquisition of land blocks comprising the forest today

3.5.3 The land comprising the basis of what is now the Warawara forest was first declared state forest in 1886 (A4:210-211).166 It included Te Kauae o Ruru Wahine blocks 1, 2 and 3, Te Takanga, Te Takanga 2 and Otangaroa 1 acquired in the 1870s.

163 Northern minute book 2, Maori Land Court, Whangarei, pp 109-114
164 Northern minute book 2, Maori Land Court, Whangarei, p 168
165 Northern minute book 2, Maori Land Court Wangarei, p 219
166 NZG 1886 pp 55-56

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The growth of the Warawara state forest to the land area it is today has not been summarised in this report. The key record documenting this is the information held by the Maori Land Information Office at Whangarei regarding the Warawara state forest which includes a schedule of land comprising that forest (A5:3-6). This schedule has been reproduced in appendix 2 (see p 136). Files F1 6/1/6 vol 2 and MA 5/5/46 (A4:330-480) document the proposals made to acquire adjoining lands for addition to the forest and provision of legal access over the years. Some of these areas were purchased, others were taken under the Public Works Act from Maori owners. The Maori Land Information Office material also provides the history of these blocks following their acquisition by the Crown. These aspects of the above files are contained in the papers constituting the document bank.

Indications of Crown policy on use of the state forest in the first half of the twentieth century

3.5.4 A number of issues involving local Maori were dealt with by Crown-appointed forest managers over the years. Any "disturbance" of, i.e. entry into, the forest was actively discouraged for fear of fire and other damage. This general policy was applied to both Maori and Pakeha. However, local Maori were constant users of the forest as a source of traditional foods and other resources following the designation of the area as state forest. As will be seen below, because of this, the forest service was reluctant to employ local Maori as caretakers (in fact showing a considerable amount of distrust of local Maori), despite a number of applications being made by them for vacant positions.

In January 1911 Edwin Mitchelson of the mill of Mitchelson & Co, merchants, brokers and exporters, at Whangape, sought timber cutting rights in the Warawara forest (A4:328). Mitchelson (1846-1934) was a prominent Member of Parliament and minister of the Crown in the late nineteenth century and a successful businessman and owner of Mitchelson & Co from 1898 to 1922. His request was rejected following a report from A J Logan, the caretaker of Warawara state forest, who felt that the forest should not be logged due to the probable risk of fire and the low price likely to be obtained for the timber (A4:324-326,321). Another request, received from J W Easson of Easson Ltd, timber merchants, was similarly declined (A4:317-320).

167 Mitchelson to Minister of Lands, 27 January 1911, F1 6/1/6 vol 1, National Archives, Wellington

168 A J Logan to Commissioner of Crown Lands, Auckland, 7 March 1911, F1 6/1/6 vol 1, National Archives, Wellington; W C Kensington, Under-Secretary of Lands to Mitchelson, 5 June 1911, F1 6/1/6 vol 1, National Archives, Wellington

169 Easson Limited to Under-Secretary for Lands, 21 June 1911, F1 6/1/6 vol 1, National Archives, Wellington; Under-Secretary for Lands to J W Easson, 11 August 1911, F1 6/1/6 vol 1, National Archives, Wellington
In 1912 reports of "Natives gum pillaging" while Logan was ill in Auckland hospital lead to the dispensing of his services and his urgent replacement. It seems that Logan had left the forest "in [the] charge of Natives" (A4:314-316).  

On 2 June of the following year Robert Ngakuru wrote to Massey and Coates asking that the forest be opened for gum digging by Maori of Mitimiti. He explained that for the last 10 years since the closure of the forest they had had a "hard struggle" making a living. Ngakuru stated that the reason the forest was closed was because Dysart bled the trees without government permission (see p 52). The Maori, he noted, were "quite willing" to pay a license fee to dig gum (A4:307-309). The request was denied. The Commissioner of Crown Lands was adamant that "on no account should State Forests be opened for gum-digging, either by Natives or Europeans, and more especially in these large kauri forests". He felt the request was obviously due to the diligence of the new caretaker, and noted that "from all accounts the natives in that locality do not bear too good a reputation" (A4:305). Three days later Pakihi Peita wrote on behalf of the women of Whakarapa and Waihou, asking that their children be allowed to dig gum for one month so that the children could go to school. She stated that the matter was put before Te Rangi Hiroa at Whakarapa in 1912 (A4:301-303).  

In August 1914 it was reported that two Maori, Kararoa Pairama and Peri Poko, had been found camped in the forest and that they had with them five and a half sacks of bled gum. The caretaker thought a number of the kauri trees had been bled lately (A4:293). The two accused were taken to court at Rawene on 30 May 1915, convicted and fined £10 with £1 16s costs and the gum found in their possession confiscated. A local person (described as a "half-caste") who alerted the authorities

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170 H M Skeet, Commissioner of Crown Lands to Under-Secretary for Lands, Wellington, 12 July 1912, F1 6/1/6 vol 1, National Archives, Wellington; Under-Secretary for Lands to Lands Department, Auckland, 13 July 1912, F1 6/1/6 vol 1, National Archives, Wellington; Commissioner of Crown Lands to Under-Secretary for Lands, Wellington, 13 July 1912, F1 6/1/6 vol 1, National Archives, Wellington  

171 Robert Ngakuru to Massey, 2 June 1913, F1 6/1/6 vol 1, National Archives, Wellington; see also Robert Ngakuru to Coates, 2 June 1913, F1 6/1/6 vol 1, National Archives, Wellington (A4:295-296)  

172 Commissioner of Crown Lands to Under-Secretary for Lands, 21 June 1913, F1 6/1/6 vol 1, National Archives, Wellington  

173 Pakihi Peita to Native Minister, 5 June 1913, F1 6/1/6 vol 1, National Archives, Wellington. Native Department files may contain further information regarding Te Rangi Hiroa’s visit to Whakarapa in 1912.  

174 Commissioner of Crown Lands to Under-Secretary for Lands, 4 August 1914, F1 6/1/6 vol 1, National Archives, Wellington
and led the constable and caretaker to the offenders was awarded £2 for expenses (A4:291).175

In 1917 the caretaker of the forest resigned. Again his replacement was considered urgent "to prevent gum thieves entering the forest". There were three applicants for the job. One had three recommendations and he was ultimately offered the job. The Commissioner of Crown Lands, H M Skeet, noted that as the two other applicants were "both half-caste Maoris" he considered it "would be more desirable to appoint" the other (A4:284).176 A year later when the caretaker died of influenza, Maori were again considered undesirable applicants (A4:273).177

In February 1920 the Commissioner of Crown Lands noted that a quantity of kauri gum, estimated to be about ten tons, remained on trees at Warawara incised by Dysart years earlier (see p 52). He thought that unless collected it would "remain an incentive for Maoris and others to trespass into the forest, thereby endangering the forest by fires" and suggested tenders be called for the work (A4:256-257).178 He feared that should the work be left to the caretaker and done by day labour "farming" of gum with fresh cuts in the trees would result (A4:254).179

In August of 1922 Joseph Leef and 13 other returned Maori servicemen "being out of work and unable to obtain any employment" requested permission to dig gum in the Warawara forest "so as to enable us to obtain an honest livelihood" (A4:268).180 The Under-Secretary for Lands asked that the petition be dealt with under ss29 and 30 of the Forests Act 1921-22 and a report was requested from the Conservator of Forests. The conservator stressed that "on no account should this be allowed". From bitter experience he recalled destructive fires and the "great deal of

175 Commissioner of Crown Lands to Under-Secretary for Lands, 15 July 1915, F1 6/1/6 vol 1, National Archives, Wellington

176 Commissioner of Crown Lands to Under-Secretary of Lands, 27 September 1917, F1 6/1/6 vol 1, National Archives, Wellington

177 Commissioner of Crown Lands to Under-Secretary of Lands, 17 December 1918, F1 6/1/6 vol 1, National Archives, Wellington

178 Commissioner of Crown Lands to Under-Secretary of Lands, 10 February 1920, F1 6/1/6 vol 1, National Archives, Wellington

179 Commissioner of Crown Lands to Secretary of the Department of Forestry, 12 July 1920, F1 6/1/6 vol 1, National Archives, Wellington

180 Joseph Leef and 13 others to Minister for Defence, 4 August 1922, F1 6/1/6 vol 1, National Archives, Wellington
damage" resultant from issuing such licences in years past (A4:264).\textsuperscript{181} When Reweti Kingi of Otiria applied for gum collecting rights at Warawara in July 1923,\textsuperscript{182} he was informed that the right had already been given to A P Browne (A4:247-248).\textsuperscript{183}

A number of requests were received from Pakeha to take timber, gum or minerals from the forest in the 1920s-1930s and declined (A4:467,459-462,223-224).\textsuperscript{184} However, in 1922 when the settlers association, Whakarapa, pressured for land within the Warawara forest to be opened for settlement (A4:246),\textsuperscript{185} it was agreed that it would be possible to release about 1300 acres at the northern end of the forest. This was done around seven years later, on 18 December 1929 (A4:236,220-221,214).\textsuperscript{186}

Around 1937 pigeon shooting was again noted to be rife. In June, D M Blithe, forest foreman, noted in his monthly report on Warawara forest that "there has been considerable pigeon shooting in the reserve, and bush adjoining the reserve ... while passing through Waireia Estate a Native, on being asked to hand over his pea rifle, and birds, pointed the pea rifle at me".\textsuperscript{187} The ranger continued:

\textsuperscript{181} Conservator of Forests to Director of Forestry, Auckland, 30 August 1922, F1 6/1/6 vol 1, National Archives, Wellington

\textsuperscript{182} Rewiti P Kingi to Commissioner of Forestry, Wellington, 23 July 1923, F1 6/1/6 vol 1, National Archives, Wellington

\textsuperscript{183} E Phillips Turner, secretary to Rewiti P Kingi, 27 July 1923, F1 6/1/6 vol 1, National Archives, Wellington

\textsuperscript{184} Gilfillan and Gentles, liquidators to Conservator of Forests, 6 April 1923, F1 6/1/6 vol 1, National Archives, Wellington; James A Hunt to A D McGavock, director of forestry, 26 September 1934, F1 6/1/6 vol 2, National Archives, Wellington; P M Sulenta to M J Savage, 15 January 1936, F1 6/1/6 vol 2, National Archives, Wellington

\textsuperscript{185} R J McCown, Secretary of the Settlers Association to Prime Minister, 24 June 1922, F1 6/1/6 vol 1, National Archives, Wellington

\textsuperscript{186} Commissioner of State Forests to Prime Minister, 4 September 1922, F1 6/1/6 vol 1, National Archives, Wellington; see also Conservator of Forests to Director of Forestry, 5 August 1922, F1 6/1/6 vol 1, National Archives, Wellington (A4:238-242). A survey was completed by November 1923 (Under-Secretary of Lands to Secretary of State Forest Service, 19 November 1923, F1 6/1/6 vol 1, National Archives, Wellington), however problems with the southern boundary delayed revocation of reservation of permanent state forest by gazette until 9 January 1930. Extract from NZG 9 January 1930 p 2, F1 6/1/6 vol 1, National Archives, Wellington.

\textsuperscript{187} The pigeon shooter was later identified as Nuki Te Hira.
the Natives are shooting all the time in organised [parties], in the Waihou and Panguru areas, both in the reserve, and on private bush in these localities.

Mr G Penny, the subsidised labourer working in this bush, has received warnings from Bill Leef, and also one Mathew Wetana, the latter a native police, of the Maori Council of this district, that I will be shot, as I have been keeping too close a watch on the bush. (A4:442)

He asked to be accompanied in his work, the "only alternative" being to "absolutely ignore pigeon shooting in this area, which according to Native talk, I should do, as they say has been done in the past". Both Maori and Europeans in the district had warned him to be careful "as the Natives, were very annoyed at my trying to stamp out pigeon shooting".

In 1941 the caretaker of Warawara forest reported a story involving eight Maori "trespassers", one with a rifle (A4:422). He complained that "the natives of this particular district have been giving me a considerable amount of trouble". The Maori involved were taken to court at Rawene on 7 August. The magistrate dismissed charges under regulation 12 of the Forest (Fire-Prevention) Regulations 1940 and adjourned the hearing for three defendants who did not appear pursuant to s47(a) of the Forests Act 1921-22 pending proof that the area was state forest. Three of those who were there were convicted and fined £1 10s and costs, one was admonished and discharged and another was dismissed, his plea being that he was not pig hunting, but catching his dogs, which had strayed onto forest service land while mustering on adjoining property. At the second hearing the other three accused were convicted and fined, two at 30s with 30s costs, one remitted on account of costs being high - £5 15s 8d (A4:418-419,414).

A year later Maori of Panguru asked for permission to use the forest to build evacuation shelters. This was refused on the grounds of safeguarding the forest and

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188 D M Blithe, forest foreman "Monthly report, Warawara forest" June 1937, F1 6/1/6 vol 2, National Archives, Wellington

189 R S Ogle, caretaker to W Gilpin, state forest service, 3 April 1941, F1 6/1/6 vol 2, National Archives, Wellington. These men were Chris Rudolf, Bill Rudolf, Tom Pakinga, Sonny Kamira, Topia Adams, Pat Rudolf, K Joe Dick and H Jacob.

190 Conservator of Forests to Director of Forestry, 18 August 1941, F1 6/1/6 vol 2, National Archives, Wellington; Conservator of Forests to Director of Forestry, 22 August 1941, F1 6/1/6 vol 2, National Archives, Wellington; Conservator of Forests to Director of Forestry, 23 October 1941, F1 6/1/6 vol 2, National Archives, Wellington
adequate areas of accessible native land considered available (A4:411,407).191

In 1937 Maori of Pawarenga had requested permission to take 200,000 feet of rimu, white pine, matai and totara from the northern end of the Warawara state forest adjoining their property (Paihia No 1 block, which they would also take timber from) for housing purposes. They had also requested that the Native Department provide a saw mill at Pawarenga to cut the timber, the cost of the mill to be borne eventually by themselves (A4:451).192 The forest service agreed to the taking of timber under its supervision as long as the Native Department "sanctioned the quantity to be purchased and accepted responsibility for payment" but it thought the quantity of timber to be taken did not warrant the expense of a mill and that it would be preferable to contract with an existing miller (A4:449-450).193 The Native Department's assistant supervisor, who was investigating the cheapest way of getting the best quality timber for Maori housing, made an alternative suggestion that "a considerable quantity of dry kauri ... eminently suitable for housing purposes for the Panguru and Pawarenga districts" be brought down the Moetangi creek adjacent Mitimiti and a milling area set aside by the forest service on a royalty basis and the timber cut by experienced local Maori bushmen and mill hands then out of work.194 But the Director of Forestry was not keen on this idea "in view of the scarcity and value of kauri timber and the fact that rimu is a good timber for house building" (A4:446).195 This stance was effectively adopted as the forest service position on kauri. The conservator concluded with regard to dry trees that "there was sufficient quantity to make it worth while for this service to consider extracting and

191 P K Paikea, Member of the Executive Council to J G Barclay, Acting Commissioner of State Forests, 25 March 1942, F1 6/1/6 vol 2, National Archives, Wellington; J G Barclay, for Commissioner of State Forests to P K Paikea, 15 April 1942, F1 6/1/6 vol 2, National Archives, Wellington

192 Under-Secretary of the Native Department to Director of Forestry, State Forest Service, 8 March 1937, F1 6/1/6 vol 2, National Archives, Wellington

193 Director of Forestry to Under-Secretary of the Native Department, 16 March 1937, F1 6/1/6 vol 2, National Archives, Wellington

194 Assistant supervisor to registrar, Native Department, 28 April 1937, F1 6/1/6 vol 2, National Archives, Wellington; registrar to Under-Secretary of the Native Department, 17 May 1937, F1 6/1/6 vol 2, National Archives, Wellington. He noted that the education department was already negotiating with local Maori on cutting timber for a school (A4:448).

195 Director of Forestry to Conservator of Forests, 4 June 1937, F1 6/1/6 vol 2, National Archives, Wellington
making them available for purposes other than house building" (A4:440).\textsuperscript{196}

When the Registrar of the Tokerau District Maori Land Board requested some kauri to repair the Mitimiti meeting house, this was granted, providing the board and the native owners of Taikarawa A and B, Moetangi and Ototope B blocks reciprocated by granting access routes through these blocks to the kauri areas, thereby providing legal access to the forest (A4:439).\textsuperscript{197} A plan of the proposed routes was drawn up by the forest service (A4:434).\textsuperscript{198} Mitimiti elders agreed to the general proposal as it would also provide legal access for themselves (A4:433).\textsuperscript{199}

In April 1951 the question of obtaining timber from the forest for Maori housing was again considered (A4:378).\textsuperscript{200} It was decided that:

applications for milling timber in Warawara Forest will not be considered until a working plan has been approved, and ... as this cannot be completed until legal access is provided and the boundaries are defined, it will be many years before there is a possibility of trees being removed from Warawara for utilisation. (A4:376)\textsuperscript{201}

The issue of legal access is not covered in this report. Also, Maori Affairs files have not been searched concerning this section of the report and will obviously hold much relevant information, especially with regard to proposals to take timber for use by local Maori.

The forest service clearly saw itself as the national conservator of the northern kauri forests from the early twentieth century. The question which arises in this claim is

\textsuperscript{196} Conservator of Forests to Director of Forestry, 9 August 1937, F1 6/1/6 vol 2, National Archives, Wellington

\textsuperscript{197} Conservator of Forests to Registrar of the Tokerau District Maori Land Board, 26 August 1937, F1 6/1/6 vol 2, National Archives, Wellington. The forest service field officer had also suggested that "if the Tapu has been removed" from Ototope C "the handing over of these areas for addition to the State Forest might be a condition on the timber deal".

\textsuperscript{198} Biggs "Plan to illustrate report on Warawara" 14 August 1937, F1 6/1/6 vol 2, National Archives, Wellington

\textsuperscript{199} Conservator of Forests to Director of Forestry, 14 October 1937, F1 6/1/6 vol 2, National Archives, Wellington

\textsuperscript{200} Under-secretary, Maori Affairs Department to Director of Forestry, 10 May 1951, F1 6/1/6 vol 2, National Archives, Wellington

\textsuperscript{201} Conservator of Forests to Director of Forestry, 21 May 1951, F1 6/1/6 vol 2, National Archives, Wellington
whether, in its role as conservator during this and subsequent periods, a role which
is recognised by the claimants, it was entitled to exclude Maori from their use of
traditional resources in much the same manner as it excluded Pakeha. Were Maori
owed further rights under the Treaty? Disregarding the issue of whether the timber
was sold along with the land (a question which is not addressed here), did the Crown
have an additional duty to tangata whenua to protect their continued use of traditional
and new forest resources? If it did have such an obligation was this obligation
fulfilled by the passing of the Resource Management Act 1991 (see below)? Did the
Crown also have a duty to assist, rather than resist, Te Rarawa ki Hokianga efforts
to find local employment?

Provisions of the Resource Management Act 1991 concerning Maori interests in
resources

3.5.5 Although there are no provisions specifically dealing with forest management in the
Resource Management Act 1991 there are provisions relating to Maori interests in
resources and Maori involvement in the management of those resources. The
following is a brief summary of ss6 to 8 of the Act which are of particular
importance here. Sections 6 to 8 stipulate that all persons exercising functions and
powers under the Act in relation to managing the use, development and protection
of natural and physical resources shall "recognise and provide for" the "relationship
of Maori and their culture and traditions with their ancestral lands, water, sites,
waahi tapu, and other taonga" (the fifth of five matters of "national
importance") (s6(e)), shall "have particular regard to" kaitiakitanga (the first of eight
"other matters") (s7) and shall "take into account" the principles of the Treaty (s8).
All of these are subordinate to the over-riding importance of achieving the purpose
of the Act: to promote sustainable management of natural and physical resources
(s5). None of these provisions go so far as to give automatic priority to Maori
values. None equate with a duty to ensure compliance with the Crown's obligations
to guarantee Maori Treaty rights in relation to their taonga. In this, the Waitangi
Tribunal has recently stated the Act is "fatally flawed". The tribunal has
recommended that section 8 of the Act be amended to read that all persons
exercising functions and powers under the Act in relation to managing the use,
development and protection of natural resources "shall act in a manner that is
consistent with the principles of the Treaty of Waitangi".

In addition, there are provisions in the Act for Maori consultation and input into
resource planning:

- There is a general requirement to consult with tangata whenua through iwi

authorities and tribal runanga in the preparation of regional and district plans (1st schedule Part 1, cl 3(1)(d)).

- Regional policy statements are to state matters of resource management significance to iwi authorities (s62(1)(b)).

- Regional plans are to consider inclusion of matters relating to "any significant concerns of tangata whenua for their cultural heritage in relation to natural and physical resources" (s65(3)(e)).

- Regional councils, in preparing policy statements or plans, are to have regard to any relevant planning document recognised by an iwi authority as affected by the policy statement or regional plan (s61(2)(a)(ii) and s66(2)(c)(ii)).

- Public authorities including "iwi authorities" (defined as the authority which represents an iwi and which is recognised by that iwi as having authority to do so) can be delegated certain functions, powers or duties of local authorities (s33).

- Where the Minister for the Environment considers a proposal is of national significance the minister may direct that he or she will decide any particular application or all applications, for resource consents in respect of that proposal. One relevant factor in determining whether a proposal is of national significance is whether the proposal "[i]s or is likely to be significant in terms of section 8 (Treaty of Waitangi)" (140(2)(h)). (Heritage orders are discussed in 6.2.2 below.)

3.6 Scenic Reserves

The claim

3.6.1 Te Rarawa ki Hokianga state in their claim that Tapuwae, Manuoha and Rotokakahi are Crown-owned scenic reserves and are sites used for community-based activities developed by their efforts and improvements. They would like to see the Crown providing some legal protection to ensure the continued use of these reserves by the community. They ask how these reserves passed to the Crown.

I have sought in this section of the report to identify the areas concerned and to answer the basic question of when or how the land came into Crown ownership and subsequently how they became scenic reserves. I have also provided information regarding present Crown administration and classification. This section should enable Te Rarawa ki Hokianga to decide which particular aspects of Crown action they see as Treaty breaches.

Figure 9 (see p 69) shows the location of these reserves and provides further details.
Figure 9:
TAPUWAEO, MANUOHAMA/MOTUKARAKA & ROTOKAKAHI RIVER SCENIC RESERVES

Manuoha/Motukaraka Scenic Reserve
Sections 67 & 68
Block IX
Mangamuka S.D. (98 ha)

Rotokakahi River Scenic Reserve
Sections 47, 48, & 93
Block III
Whangape S.D. (46 ha)

Tapuwae Scenic Reserve
Sections 1 & 1A
Block XIII
Mangamuka S.D. (206 ha)
3.6.2

Tapuwae scenic reserve (sections 1 and 1A, block XIII, Mangamuka Survey District)

The land within which the Tapuwae scenic reserve is a part, Tapuwae no 3 block, was sold to the Crown on 11 March 1897 (see table 3 p 40 and figure 8 p 41).

Tapuwae no 3 was subsequently subdivided into three blocks, 3A, 3B and 3C, at court sittings at Rawene on 11, 12 and 15 March 1897, following a Crown request for subdivision in favour of Her Majesty (A5:215-226).

R J Gill, on behalf of the Crown, stated that there were 205 owners to the block and calculated on the basis that each held equal shares that the 108 owners who had wholly or partially sold the land to the Crown represented 104 and 4/15 shares, equal to 529 acres and the 97 non-sellers represented 100 and 11/15 shares, equal to 511 acres. The request was for an order of 529 acres in favour of Her Majesty (A5:215-216).

Objection was made regarding: the assumption that all "owners" held equal shares, the location of the land sought by the Crown (as it included the kainga of some of the non-sellers), the Crown's understanding of just which shares in which of the areas of land within the block were sold to the Crown, and more importantly which were not, and the validity of some of the signatures obtained on the deed (A5:217-224).

A settlement was made reserving 25 acres 1 rood 19 perches, that is Tapuwae 3C, to five non-sellers in equal shares; the balance of the land, Tapuwae 3B, of 485 acres was sold to the Crown.

The photocopies obtained from the Department of Conservation in Whangarei and Kaikohe, used in this section of the report were not clearly referenced. In addition, the photocopies taken did not always provide a full copy of the entire page, for example leaving out the name of the sender of the letter, and my referencing will sometimes reflect this.

Tapuwae block was surveyed by E F Tole in 1876 and the plan was amended when it was subdivided into four "portions" by G J Woolly (the plan attributes the subdivisions to "Woolley", however, he signs his name "Woolly"). Woolly's instructions had come by telegram dated 21 March 1882, so it was sometime between this date and 18 July 1882 when he forwarded the plan, ML 3649B, to the Chief Surveyor at Auckland, that he completed the subdivisions with the aid of a guide, James Harris, whom he describes as a "Half Cast" (see ML 3649B). The four portions subdivided by Woolly became known as Tapuwae block nos. 1, 2, 3 and 4. See A3:116-118.

MLIO "Motukaraka and Tapuwae blocks", appendix D 1.5, Maori Land Court, Whangarei

Unfortunately the copies I have of the minutes are not clear. They have been included in the document bank accompanying this report but new copies may need to be obtained.
acres, 2 roods, 21 perches, was allocated to the non-sellers exclusive of the five whose claim was satisfied in Tapuwae 3C (A5:225-226). Figure 9 (see p 69) shows this.

The acquisition of Tapuwae 3A of 529 acres by the Crown was confirmed by Judge Wilson in Rawene on 15 March 1897 and subsequently it was declared Crown land (A5:227-229).

The first suggestion that the majority of this 529 acre area acquired by the Crown should become a scenic reserve was made in 1905. In January of that year the Commissioner of Crown Lands requested that the District Surveyor, T K Thompson, examine section 1 block XIII Mangamuka S D (Tapuwae 3A minus a bit) "with the view of reporting to me whether there is marketable timber in such quantity that the section should be withheld from selection" as it was advertised to be open for selection on 1 March (A5:358). The surveyor thought that there was sufficient milling timber there to withdraw the section from sale until a correct estimate was made. He noted that puriri was being cut for railway sleepers on the adjoining "native" land and that he was informed that "some time ago the natives were stopped from removing puriri from Section 1". He also stated:

A portion of this section (10 acres) has already been made a scenic reserve, but as this is the only Crown land in the vicinity, and as there appear to be very few reserves of any kind on the Hokianga River, I beg to suggest that a larger portion should be reserved for Scenic purposes, or as a bush reserve. (A5:357)

Later a portion of Tapuwae 3B (Tapuwae 3Bl, 16 acres) was deducted in lieu of survey costs of £8 1s 1ld. "Heremea Te Waake" stated this had been deducted from land sold to the government in the purchase of Tapuwae 2, but this is Woolly’s charge.

MLIO "Motukaraka and Tapuwae blocks", appendix D 1.6, Maori Land Court, Whangarei

NZG 7 October 1897 p 1747, MLIO "Motukaraka and Tapuwae blocks", appendix D 1.8, Maori Land Court, Whangarei. G Mueller, E F Tole, and J Bird surveyed the block (see plan 3649 B1) MLIO "Motukaraka and Tapuwae blocks", appendix D 1.7, Maori Land Court, Whangarei.

Note the area Vujcich (see p.98) stated his land to be is Tapuwae 3A. Perhaps some of 3A was leased or sold to him.

Commissioner of Crown Lands to T K Thompson, District Surveyor, 28 January 1905, L&S DO file 13/63, DOC, Whangarei

District Surveyor to [Chief Surveyor], 12 February 1905, L&S DO file 13/63, DOC, Whangarei. This is seemingly in response to the Commissioner of Crown Lands' letter above to the District Surveyor dated 28 January 1905. In fact, the 10 acres was merely a map
The Chief Forest Ranger was asked to obtain an estimate of the milling timbers on the land and to report as to the value of the section as a scenic or bush reserve. The commissioner proposed asking the land board to make a part if not the whole of the land a reserve for bush or scenic purposes if this was suitable (A5:356).214

The report subsequently written by H T Hursthouse, with detail as to the number and estimated footage of timber of rimu, kahikatea, puriri, kauri, totara and matai trees, concluded that "the bush is beautiful in itself, being free from heavy undergrowth, in place of which are masses of Nikau Palm well worth preserving" (A5:340-353).215 On 25 May 1905 the land board recommended that the section be made a reserve for the preservation of scenery under s235 of the Land Act 1892 (A5:337)216 and the Tapuwae scenic reserve, of 202 hectares, came into existence in 1905 under the Scenery Preservation Act 1903 (A5:330).217

A number of attempts have been made over the years by Maori and Pakeha alike to have the reservation removed and make the land available for purchase or for timber. However these attempts have not been successful. During 1932 some timber was taken illegally and sold to the King Timber Co at Kohukohu. Tihi Harris admitted the theft and was fined £30 (A5:278).218 Although the company knew the timber to be stolen, action was not taken against it (A5:277).219

Section 16 of the Reserves Act 1977 provided that all reserves were to be classified. The classification committee recommended that the Tapuwae scenic reserve remain scenic reserve (see below).

214 James Mackenzie, Commissioner of Crown Lands to H P Kavanagh, Chief Forest Ranger, 10 April 1905, L&S DO file 13/63, DOC, Whangarei


216 James Mackenzie, Commissioner of Crown Lands to Under-Secretary for Lands, 22 June 1905, L&S DO file 13/63, DOC, Whangarei

217 NZG 7 September 1905 p 2183, see "ARP" to S Percy Smith, 21 November 1905, L&S DO file 13/63, DOC, Whangarei


219 Under-Secretary of Lands to Commissioner of Crown Lands, 15 November 1932, L&S DO file 13/63, DOC, Whangarei
"scenic" (A5:379-380).

Section 1A was still not officially a scenic reserve at this time. As early as November 1905 it was noted that the adjoining section 1A block XIII Mangamuka SD, of 10 acres, had not been gazetted as scenic reserve, although it appeared on cadastral maps as being a reserve (A5:327). However, this block was often referred to as a scenic reserve in the correspondence and appears to have been treated as such despite the lack of a gazette notice. In 1980 this "map" scenic reserve was gazetted (A5:258) and classified for scenic purposes (A5:255).

Only recently has there been any official record of tangata whenua involvement in monitoring or administering this scenic reserve and that was a report on the Tapuwae scenic reserve by John Beachman the District Conservator, Department of Conservation, who visited the reserve on 18 August 1989 with L Forester and A Walker and he stated "Ben Te Wake of Motukaraka came with us". In the management planning section of his report he noted that the fishery was in steady decline and that there was a need for cooperation of the local Maori groups to combat this. He noted that "[t]hese are delicate issues as they cut across particular people's traditional rights" (A5:385-387).

Tapuwae scenic reserve is presently administered by the Department of Conservation (A5:392).

Manuoha/Motukaraka scenic reserve (sections 67 and 68, block IX, Mangamuka Survey District)

I have presumed that the Manuoha scenic reserve is the reserve referred to as the Motukaraka scenic reserve by the Department of Conservation, as it is situated above Manuoha stream.

The land of which this reserve is a part is not encompassed within the blocks comprising the research area. The reserve is part of Motukaraka West B block. I will briefly summarise when and how this block was alienated from Maori ownership


221 "ARP" to Boscawen, 21 November 1905, L&S DO file 13/63, DOC, Whangarei

222 NZG 1980 p 558, see L&S DO file 13/63, DOC, Whangarei

223 NZG 1980 p 1691, see L&S DO file 13/63, DOC, Whangarei

224 John Beachman, file note on Tapuwae scenic reserve, nd, DOC 521, DOC, Kaikohe. Note, this comment was made according to sources current in early 1991.

225 DOSLI Register of Protected Natural Areas in New Zealand (Wellington, 1984) p 12
here, but do not pretend to have looked into it, or any of the Motukaraka block purchases, in any detail.

Motukaraka West was put through the court to determine ownership on 22 October 1897. Judge Wilson presided with Karaka Kereru Tarawhiti as assessor. Nui Hare requested at the court hearing that Motukaraka West A (around 1028 acres) be reserved for 99 named people and that Motukaraka West B (775 acres) be held in trust by himself and the Chief Surveyor under s10 of the Native Land Laws Amendment Act 1896. The trust would be set up to raise funds by the sale of the land to pay for survey and the expense of investigation of title of the Motukaraka West blocks and Ngatihou's portions of Te Tapuwae block (see ML 3649A and B, A3:116-118). The balance of the funds, if any, was to be deposited with the Public Trustee. This request was ordered by the court (A5:156-167).226

In a gazette notice of 8 July 1909 Motukaraka West B was declared subject to Part I of the Native Land Settlement Act 1907 and available for sale or lease, not considered required for occupation by the Maori owners, under s4 of the Act (A5:169-170).227

In 1913 26.8 perches of the land was taken for a road under s389 of the Native Land Act 1909. In April 1914 the Tokerau District Maori Land Board was awarded ownership of the rest of the land. In January 1915 the board sold the 775 acres to the Crown for £968 15s and in February a gazette notice was published proclaiming the land to be Crown land under s374 of the Native Land Act 1909 and s14 of the Native Land Amendment Act 1914 (A5:171-178).228

The earliest correspondence found to date regarding the reservation of sections 67 and 68 block IX Mangamuka SD for scenic purposes was over 25 years later, in November of 1940, when the Commissioner of Crown Lands, L J Poff, stated that the decision had been made to declare these sections a scenic reserve, and that the matter was to be considered by the scenery preservation board (A5:409).229 The Motukaraka scenic reserve came into existence in 1941 (A5:393-394).230

226 MLIO "Motukaraka and Tapuwae blocks", appendix C 1.1 - C 1.5, Maori Land Court, Whangarei.

227 MLIO "Motukaraka and Tapuwae blocks", appendix C 1.7, Maori Land Court, Whangarei

228 MLIO "Motukaraka and Tapuwae blocks", appendix C 1.8 - C 1.11, Maori Land Court, Whangarei

229 L J Poff, Commissioner of Crown Lands to F S Beachman, field inspector, Kaitaia, 22 November 1940, DOC 257, DOC, Kaikohe

230 NZG 1941 I pp 747-748
Today there are three areas of Crown-owned lands in this area and it is important to distinguish the scenic reserve from the other land areas. Sections 67 and 68, block IX, Mangamuka S D is the Motukaraka scenic reserve (A5:410); sections 65 and 66, block IX, Mangamuka S D is the Tapuwae state forest; and section 13A, block V, Mangamuka S D is unoccupied Crown land (referred to as "map scenic reserve") acquired in 1880 (A5:396-397). Figure 9 (see p 69) shows these land areas.

There have been many attempts to put these three areas of adjoining Crown land under one administration, and many joint reports from officers of the Department of Lands and Survey and the forest service to achieve this. In 1969 a joint report between the district ranger of the forest service, R G Lawn, and the senior field officer of the lands and survey department, W M Taylor, recommended the amalgamation of the scenic reserve and adjoining state forest under one administration "[e]ither all Scenic Reserve or all State Forest" (A5:399-402).

The question of whether the state forest and scenic reserve should be made scenic under the lands and survey department, or whether it should become state forest under the forest service, and what should be done with the "map scenic reserve", continued for many years. In 1977 one joint report suggested that section 13A, being "unworthy of scenic status" be offered to the adjoining farmer, however, lack of finances and the nature of the land appear to have prevented this. It was suggested that this land be left as unoccupied Crown land (A5:411-420). The possibility of the state forest becoming part of the scenic reserve seems to have been favoured more than the opposite way around, however this does not appear to have been resolved.

The naming of the Motukaraka scenic reserve was questioned in 1977, probably relating to the classification of reserves under the Reserves Act 1977. It was noted by the Commissioner of Crown Lands that although section 67 and part section 68 are gazetted as scenic reserves and referred to as the Motukaraka scenic reserve, the reserve had never been named as such. He sought advice from the senior field officer of the lands and survey department as to the suitability of this name (A5:414-415). The reply indicated that as the name was in common usage it should be

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231 See map of "Section 13A block V Mangamuka SD and sections 33, 65, 66, 67 and pt’s sec 68 block IX Mangamuka SD", L&S DO file 13/144, DOC, Whangarei

232 NZG 1880 p 453 (part of Tapuwae No 2). This section was described as a scenic reserve as early as 1917.

233 R G Lawn, district ranger, and W M Taylor, senior field officer, joint report, nd, DOC 257, DOC, Kaikohe

234 G McMillan, Commissioner of Crown Lands to the senior field officer, lands department, 6 October 1977, L&S DO file 13/144, DOC, Whangarei
gazetted as such (A5:411-412).235 There is no official record of any tangata whenua involvement in this process.

The Manuoha/Motukaraka scenic reserve is now administered by the Department of Conservation (A5:392).236

Rotokakahi river scenic reserve (sections 47, 48 and 93, block III, Whangape Survey District)

3.6.4 The Rotokakahi river scenic reserve is within a land block formerly called the Rotokakahi A2 block which was alienated to the Crown on 20 March 1897 (see table 3 p 40 and figure 8 p 41). I have not compiled any further information on this purchase to date.

The earliest record found to date regarding the Rotokakahi river scenic reserve is a memorandum dated October 1952, from the Commissioner of Crown Lands to G E Mulligan, field officer, lands and survey department, stating that "[s]teps were taken early in 1947 to have the following areas reserved for Scenic purposes" however "[t]he matter appears to have been overlooked in Head Office, but has now been reviewed" (A5:483).237 Before further action could be taken they needed to know what fencing would be required and the approximate cost to the department.238 The commissioner continued:

As the sections are in what is chiefly a Maori community it is questionable whether a suitable Scenic Board could be encouraged to take an interest in the area if it were constituted a Scenic Reserve. Will you kindly obtain the views of the Hokianga County on this matter as it is thought the Council might be willing to take over our control of the reserve. (A5:483)239

Field Officer L B Shalders reported that further fencing was required and that it would cost far more than the area was worth, although he thought the local farmer may contribute to costs on his boundary if approached. He also stated:

235 W Murray, field officer and L G Fisser, district field officer, joint report on "Motukaraka scenic reserve", 1 December 1978, L&S DO file 13/144, DOC, Whangarei

236 DOSLI Register of Protected Natural Areas in New Zealand (Wellington, 1984) p 12

237 Commissioner of Crown Lands to G E Mulligan, field officer, lands and survey department, 23 October 1952, L&S DO file 13/150, DOC, Whangarei

238 This was with reference to an earlier report written by a Mr Young. The date the report was written is partially obscured. It is clear that it was on 21 February, but not which year. My guess is that it would have been in 1947.

239 Commissioner of Crown Lands to Mr G E Mulligan, field officer, lands and survey department, 23 October 1952, L&S DO file 13/150, DOC, Whangarei
I spoke to one of the Maori Affairs officers at Broadwood regarding the Maoris in the settlement forming a Board and taking an interest in the area but he was not very optimistic regarding their reaction and he thought it would be a waste of time forming a Scenic Board, especially as the area is situated well back from the road and actually has no scenic value. (A5:482)

He noted that Yarborough, the Chairman of the Hokianga County Council, had suggested that the commissioner write to the council to obtain a response regarding the proposal. The council suggested that the area be controlled by the forest service. They preferred this option to that of leaving the areas as unoccupied Crown land (A5:477). This suggestion was submitted to the Conservator of Forests (A5:475). E A Corby, the district ranger at Kaikohe, called upon to report on the proposal, also recommended that the sections be proclaimed state forest (A5:470-471). Following this report, the Conservator of Forests agreed to the setting apart of the area as permanent state forest land for scenic and protection purposes (A5:469).

Although in late 1953 the Director-General of Lands clearly thought that the land was to be set aside as permanent state forest (A5:474), the Commissioner of Crown Lands, who had personally advocated the area be put aside as scenic reserve, had not intended this at all. He had conducted "a chance inspection of the file" and could not agree "in any respect with many of the opinions expressed" by his staff concerning the proposal. In his opinion, it naturally lent itself "for the purpose of a scenic reserve, the control of which should remain the responsibility of this Department". He strongly recommended that sections 47, 48 and 93 be proclaimed state forest land.

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240 L B Shalders, field officer, Department of Lands and Survey, to the Commissioner of Crown Lands, 12 February 1953, L&S DO 13/150, DOC, Whangarei

241 Commissioner of Crown Lands to Director-General of Lands, 4 June 1953, L&S DO file 13/150, DOC, Whangarei

242 Commissioner of Crown Lands to the Conservator of Forests, 11 June 1953, L&S DO file 13/150, DOC, Whangarei

243 E A Corby, district ranger to Conservator of Forests, 3 August 1953, L&S DO 13/150, DOC, Whangarei

244 F J Perham, Conservator of Forests to Commissioner of Crown Lands, 13 August 1953, L&S DO file 13/150, DOC, Whangarei

245 Director-General of Lands to Commissioner of Crown Lands, 17 June 1953, L&S DO 13/150, DOC, Whangarei. In June of 1953 he had suggested that the two options open were to leave the areas as unoccupied Crown lands or create scenic reserves (he had preferred the former).
If we are not able at this stage to set up a local Board to control the area, that is no adequate reason why the Department should not assume responsibility for its care until such a Board can be set up and to adopt the attitude that such areas are best vested in the control of the State Forest Service is to my mind a retrograde step and one which cannot be supported by me personally. (A5:464)

The reference to the possible lack of a scenic board appears to relate back to the much repeated view, seemingly originating from the commissioner himself in October 1952, that "it is unlikely a suitable Scenic Board could be formed in what is largely a Maori Settlement". It is not clear whether local Maori were ever themselves consulted about this.

By 18 December 1953 the Minister of Lands had "approved of these areas being set apart for Scenic Purposes" and informed the Commissioner of Crown Lands that "the necessary gazetting is being arranged" (A5:462). However, hand written additions to this indicate there was still disagreement.

In 1955 sections 47, 48 and 93, block III, Whangape survey district, of around 46 hectares, were created a scenic reserve (A5:457). On the basis of reports from officers Lawn and Taylor, the Scenic and Allied Reserves Committee decided in 1974 that sections 48 and 93 were to be classified as scenic A, and section 47 as scenic B (A5:447). Pursuant to the Reserves Act 1977 the reserve was classified as a reserve for scenic purposes subject to the provisions of s19(1)(a) of the Act (A5:421).

In October of 1976 it was proposed that section 94, block III Whangape S D and part section 25 block III Whangape S D, comprising a total of 68 hectares, be added

246 Commissioner of Crown Lands to Director-General of Lands, 13 November 1953, L&S DO 13/150, DOC, Whangarei

247 Commissioner of Crown Lands to Conservator of Forests, 18 December 1953, L&S DO file 13/150, DOC, Whangarei

248 NZG 4 August 1955 p 1228, see L&S DO 13/150, DOC, Whangarei


250 NZG 15 November 1979, p 3307, see L&S DO 13/150, DOC, Whangarei

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to the scenic reserve (A5:487-488).\(^{251}\)

The Rotokakahi river scenic reserve is presently administered by the Department of Conservation (A5:391).\(^{252}\)

### 3.7 Maori Land Development Schemes

The claimants say that the Crown has failed to assist them to develop their area and has hindered their efforts to create employment by its economic policies including cutting funds for agricultural, forestry and fishing ventures. In particular they ask whether the Crown has a duty under the Treaty to return the Waireia development scheme and Tapuwae Incorporation land without further payment on the part of Te Rarawa ki Hokianga. I have not researched these two specific claims for this report,\(^{253}\) but refer to p 6 of this report in relation to the latter claim. I have sought here to provide background to the establishment of development schemes in the area in response to the more general claim above.

Sir Apirana Ngata launched a programme of massive expenditure on Maori land development in 1928, when he became Native Minister. Maori land development schemes began in the northern Hokianga in 1932, following a hui held at Waipuna marae in Panguru in July of that year with Sir Apirana Ngata.\(^{254}\) King thought that there was certainly a need for this kind of development in the Hokianga at this time. He noted that large-scale selling of Maori land was over and the money available in earlier years from this source had long since gone; virtually all the easily millable timber had been removed without replacement and this source of income had collapsed by the 1920s; the bottom had fallen out of the kauri gum industry by the 1930s and the depression of the late twenties had meant that the casual labour usually available to Maori rural workers was cut back.\(^{255}\)

The idea Ngata and the other officials present put to the hui was that the Hokianga area would be divided into 11 development schemes to comprise over 98,000 acres, 7000 acres of which was to be developed into 50 separate farms in the Panguru,

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\(^{251}\) G McMillan, Commissioner of Crown Lands to Conservator of Forests, 5 October 1976, L&S DO file 13/150, DOC, Whangarei. Note file F1 9/1/22, a file held at the National Archives in Auckland, may provide further information on this reserve.

\(^{252}\) DOSLI Register of Protected Natural Areas in New Zealand (Wellington, 1984) p 10

\(^{253}\) See material provided in MLIO "Crown lands - north Hokianga", Maori Land Court, Whangarei, for further information on Waireia.

\(^{254}\) King op cit p 117

\(^{255}\) King op cit p 112
By March of 1933, when Ngata returned, this time with the Prime Minister and other dignitaries, 5000 of the 7000 acres were under development. One newspaper report read:

This is the biggest scheme of its kind among the Ngapuhi property. It carries 1400 head of cattle and comprises 50 units. The expenditure to date is £7,500. Its development has reached a high standard, due largely to the unbounded enthusiasm of Mrs R. Gilbert [Dame Whina Cooper], who is almost on speaking terms with every batten in the high grade fences which subdivide the holdings. "Every post a strainer" has been one of the slogans in the district, and the fences are a practical testimony to the spirit in which the native settlers have entered into the scheme. In the words of the Prime Minister, many a Pakeha settler seeing such remarkably fine fences as at Panguru might well take a leaf from a native’s book. (A5:502)257

Newspaper reports following this visit, heaped with praise, abound (A5:498-506).258 King wrote:

The Panguru units, most of them thirty to forty acres in extent, continued to make progress in the years that followed. They went into production and began to pay off their workers with a living. These same workers erected houses on the farms with materials provided by the Department of Native Affairs. By 1938, a total of 19,466 acres had been developed in the Hokianga district. They were carrying 3,659 milking cows and 2,249 dry stock and directly supporting a total population of 3,264 Maoris. ‘The children got milk regularly for the first time,’ Whina noted. ‘The owners were soon able to bring in beef cattle, pigs and sheep, for meat. All this was good for health and good for family life.’259

A flow on effect from this, King noted, was a revival in Maoritanga.260

256 King op cit p 118
257 Auckland Star clipping cited in King 1983:123; full clipping in King, Acc 85-80 box 6/14, Alexander Turnbull Library, Wellington
258 King, Acc 85-80 box 6/14, Alexander Turnbull Library, Wellington
259 King Whina (Auckland, 1983) p 125
260 Ibid
What happened to the Maori land development schemes on Te Rarawa ki Hokianga land is a critical question in considering Crown support of the local economy. The records held on development schemes in the research area in the Maori Affairs files at National Archives in Wellington are numerous and should be consulted. Undoubtedly one of the other key sources of information on the development schemes in the area is Dame Whina Cooper herself, who played a prominent and vital role in the schemes, as well as others who participated in them.

261 See AAMK series 869; MA series 52 12a, b and c provides more general information
4.1 The Claim

Te Rarawa ki Hokianga claim that the Crown has failed to protect their continued possession and use of the awaawa flowing from nga maunga listed in the statement of claim. Some of these streams are tapu. The claimants say the Crown has failed to ensure that the water quality of their streams will be protected for present and future generations. Similarly, they claim that the harbour, mudflats and the foreshore, an important source of traditional kai moana, are not being adequately protected. They dispute Crown ownership of the Hokianga mudflats. The claimants say the Crown has failed to protect their fisheries. They claimed the right to the fisheries throughout the harbour along the coast and off shore as a taonga of their people.

While, as noted above (see p 5), the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 claims to have discharged all of the Crown’s Treaty obligations with respect to commercial fisheries, it is not purported that this is the case with non-commercial fisheries. With this reservation in mind, much of what is claimed by Te Rarawa ki Hokianga can be related to (a) the alleged duty of the Crown to protect the fisheries as a whole and (b) the alleged right of the tangata whenua to the undisturbed use, control or "possession" of fisheries in a non-commercial sense.

I have not researched the protection and "right to undisturbed use of" the sea or inland waterways for this report. Instead, I have focused on the protection and possession of the mudflats with particular focus on the two relocations I have identified in the research area. I have also looked at some of the local history concerning the protection of the foreshore and harbour resources. The sections immediately following this introduction record histories of complaint by local Maori regarding the lack of conservation of these resources and the Marine Department response to both these and to local Maori initiatives to remedy the problems occurring.

4.2 Protection of Harbour Resources

The first mention found to date of pollution in either of the harbours within the research area was in 1907, when G W Budd, coastwatcher at Herekino, noted that sawdust from the mill of Mitchelson & Co at Whangape, was "streaming through four gaps" in the breastwork of the retaining wall into the Whangape harbour.
It appears likely, on the basis of the remainder of the file, that this was brought to his attention by local Maori.

A letter of concern written by local Maori, extending this complaint to include the dumping of sand used as ballast in the river, was made to the Minister of Marine on 12 October 1908. The letter stated that the Whangape "river" was "being silted up by sand [and] kauri sawdust", the sand being ballast from the ships of Mitchelson & Co and the sawdust from the company's mill. The debris, it was explained, was being deposited on the upper side of the wharf, "a portion (of the paddock) having been left open for the sawdust to run through to the river, where it floats on the water for a short time and then sinks". J Howard explained that:

the paddock is left open so as to allow the sawdust to escape into the sea, lest the paddock might be filled quickly and there would then be no room for any more sawdust which might come afterwards. From the very commencement of this mill right down to this day, the 19th of October, 1908, has this gate been left open. This is not hearsay but a fact seen with my own eyes, for my employment has been that of milling in this very mill ....

Well this is a word from us .... For Mitchelson says "What do I care if this river is silted up for will not my time in Whangape River be soon completed, and as to their (the Maoris) fish and pipis, what does it matter if they are destroyed". Of course we only suppose he thinks this so to speak - for Mitchelson will take his departure and the loss will be left by him for the Maoris to bear, as the only cheap relish a Maori has to eat with his food (ie vegetables) is fish and pipis. This is grievously illtreating the river and the fish - a most grievous piece of illtreatment .... the control in these troubles lies with you ....

The mill above referred to is not working now, nor is there any logging going on, nor are there any ships loading (here) now-a-days. If you caught them at work you would then see positively (for yourself) the methods of Mr. Mitchelson. (A6:47-54)

Although the Secretary of Marine, George Allport, acted on both these complaints, requiring local officers to report on the situation at the time of the complaint and

262 G W Budd, coastwaiter to collector of customs, Auckland, 25 July 1907, M1 4/50, National Archives, Wellington

263 J Howard and others to J A Millar, 12 October 1908, M1 4/50, National Archives, Wellington
afterwards, to check that warnings had been heeded (A6:44-45). Mitchelson & Co continued to let sawdust seep through into the harbour (A6:43). In one report the coastwaiter stated that with regard to the dumping of ballast:

ballast has been discharged under the wharf, the reason given for this action, was that it was done to make the wharf more secure, as it was built on rock, and had not very secure foundations.

The Coastwaiter states that navigation has not been interfered with.

Instructions have been given for the practice to be discontinued. (A6:42)

In January 1909 Budd reported that:

not withstanding several warnings, this sawdust is still being allowed to run into the harbour unchecked. There is a gateway in the breastwork, it is open and the tide is allowed to wash into the sawdust heap on one side of the mill, while on the other side of the mill, the breastwork is nearly all broken down, and [ballast], sawdust and slabs that were formerly enclosed are now being washed into the harbour.

I have spoken several times about this, and I am always told that it is just going to be repaired. (A6:39)

At this point Mitchelson himself wrote denying the claims, stating his intention to replace the breastwork as soon as the pile-driver, presently employed at Herekino, was at liberty to do so. He stated the problem was the teredo (a ship worm which bores into wood) in the north (A6:37-38).

264 This was possibly largely because these actions were in breach of the Harbours Act. Allport to collector of customs, Auckland, 3 November 1908, M1 4/50, National Archives, Wellington. Allport to collector of customs, Auckland, 19 November 1908, M1 4/50, National Archives, Wellington.

265 Acting collector of customs, Auckland to Secretary of Marine, 21 November 1908, M1 4/50, National Archives, Wellington

266 Acting collector of customs, Auckland to Secretary of Marine, 15 December 1908, M1 4/50, National Archives, Wellington

267 Coastwaiter, Herekino to collector of customs, Auckland, 21 January 1909, M1 4/50, National Archives, Wellington

268 E Mitchelson, Managing Director of Mitchelson Timber Company Ltd to collector of customs, 20 February 1909, M1 4/50, National Archives, Wellington
Despite this assurance, the job still was not done by 10 August 1909 when A Ngawaka wrote to say that he feared the channel would become blocked owing to the ballast being washed into it near low water mark. He wanted this "Danger" removed as soon as possible (A6:28). J H M Carroll, the Manager of the Mitchelson Timber Co Ltd, explained on 16 September 1909 that floods and weather had damaged repairs. He stated that the mill was not working at that point in time anyway, and repeated that the ballast was not being deposited in the harbour, only under the wharf, to secure it (A6:25).

In November of 1910 Budd sent a notice to the manager "respectfully" calling his attention to the fact that there had been several complaints, that he had mentioned this several times, and "as many times been promised that the repairs should be completed at once", but that this had not ensued. He noted that several cargoes of ballast had been deposited inside the deteriorating retaining wall, and that it had all washed into the harbour. He concluded with something of an ultimatum:

I must point out to you for the last time that this is a breach of the Harbour Act, and if when I come to Whangape next week, this wall is not well advanced, the duplicate of this notice will be forwarded on to the Collector of H. M. Customs, Auckland. (A6:21)

The report was duly sent to the collector of customs along with the following:

on the 2nd inst, 200 tons of ballast was deposited behind this wall, it has all dis-appeared, this breastwork is broken down for five or six chains, sawdust, slabs and Ballast, are in consequence being washed out every tide. I have spoken about this wall frequently for two years, and each time a couple of piles are driven or some other trivial thing is done, just enough to cause an officer to send in a report which is untrue, complaints are being made to me by the natives, that this debris is killing the fish. (A6:20)

By 13 December 1910 Mitchelson Timber Co Ltd was in liquidation. The new manager, despite working under the liquidator’s instructions that no material be deposited below high water mark on the company’s property, was equally...

269 A Ngawaka to [], 10 August 1909, M1 4/50, National Archives, Wellington

270 J H M Carroll, Manager of Mitchelson Timber Company Ltd to coastwaiter, Whangape, 16 September 1909, M1 4/50, National Archives, Wellington

271 Coastwaiter, Herekino to [Carroll], Manager of Mitchelson Timber Company Ltd, 2 November 1910, M1 4/50, National Archives, Wellington

272 Coastwaiter, Herekino to collector of customs, Auckland, 22 November 1910, M1 4/50, National Archives, Wellington
unresponsive. In January 1911, Budd reported the retaining wall to be in a "worse condition" than when he first reported it, that no repairs were being done, the ballast was still being emptied behind the wall and washed out into the harbour. He also stated:

Andrew Ngawaka states that a bank is silting up opposite the Whangape wharf. Ngawaka is a native of Whangape, has lived there all his life, and has called my attention several times to this broken wall. Constable Hampton of Herekino, was with me when I visited Whangape on the 14th inst, he saw this damaged wall. (A6:14)\textsuperscript{273}

By September 1913 W E Hunt had succeeded Budd as coastwaiter at Herekino. He had contacted the secretary at the mill a number of times about debris dumping below high water mark, and in a letter to the superintendent of mercantile marine he stated that no serious attempt was being made to stop the sawdust, which indisputably was being carried out into the harbour and along the foreshore but not interfering with navigation:

Mr Ngawaka and other educated Maoris of Whangape are prepared to give evidence that sawdust is escaping into the harbour, and they complain bitterly because they assert that the sawdust is spoiling their fishing. The latter cause is undoubtedly their [greatest] grievance. (A6:9-11)\textsuperscript{274}

As a result, proceedings were instituted against the "Whangape Timber Co" on 19 January 1914. They were convicted and fined £2 and 17s costs (A6:6). The fine did not stop further sawdust dumping, as by June 1919 a further complaint had been filed by Ngawaka. Budd, who was now coastwaiter at Whangape, had also noted this as a "matter of complaint by the natives" in addition to a new problem:

several natives have lodged complaints about the dangerous slips that might be caused by the continued removal of gravel and desires that it be discontinued pending the examination of the foreshore by an official. (A6:98)\textsuperscript{275}

John Brindle, the harbourmaster at Hokianga, investigated the complaint and agreed that the taking of gravel from that part of the river should cease immediately.

\textsuperscript{273} Coastwaiter, Herekino to superintendent, mercantile marine, Auckland, 16 January 1911, M1 4/50, National Archives, Wellington

\textsuperscript{274} W E Hunt, coastwaiter, Herekino to superintendent of mercantile marine, Auckland, 22 September 1913, M1 4/50, National Archives, Wellington

\textsuperscript{275} Coastwaiter, Whangape to [], nd, M1 4/927, National Archives, Wellington
John Wood, the resident engineer of the public works department district office in Whangarei, agreed that their contractor, J Harrison, who was carrying out the work, would stop. Following this, officialdom appear to have adopted the suggestion made by the district engineer that there would be no harm done in removing shingle from either Rotokakahi river, Pakinga point or the area on the southern side of the harbour extending from the site of the ferry to the bar. This delve into Marine Department records clearly shows that the tangata whenua of Whangape were continuously concerned about the ill-effects sawdust and sand dumping and gravel extraction was having on the harbour and its resources. This was not a singular complaint but a continuous call for the harbour’s protection for at least the 11 years reported here. While the Crown was responsive to Maori complaints, it did not act with enough force and speed to control the continued damage.

4.3 The Right to Management and Control or Possession of Foreshore Resources

In their statement of claim Te Rarawa ki Hokianga claim "the right to the fisheries throughout the harbour along the coast and off-shore" and they seek the management and control of their local fisheries and spawning grounds by traditional means in conjunction with the relevant government agencies.

As noted above (see p 5), while this part of Te Rarawa ki Hokianga’s claim is narrowed following the Sealord deal it is still valid with respect to non-commercial fisheries. The Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 provides that the minister consult tangata whenua about policies to help recognise the use and management practices of Maori in exercising such fishing rights. It also allows the minister to recommend regulations be made to recognise and provide for customary food gathering and the special relationship between tangata whenua and places of customary food gathering, as long as such gathering is neither commercial nor for pecuniary gain or trade (s10(c)).

"Management and control" of non-commercial fisheries, as sought in the claim, is not given to Maori in the 1992 Act, although its stated purpose was:

276 John Brindle, harbourmaster, Hokianga to Secretary of Marine, 24 May 1919, M1 4/927, National Archives, Wellington

277 John Wood, resident engineer to marine engineer, 1 July 1919, M1 4/927, National Archives, Wellington

278 District engineer to engineer-in-chief, 10 May 1921, M1 4/927, National Archives, Wellington
(b) To make better provision for Maori non-commercial traditional and customary fishing rights and interests; and
(c) To make better provision for Maori participation in the management and conservation of New Zealand's fisheries.

The question is: does the Act go far enough to satisfy this claim? Is Maori "participation" in the management and "conservation" of New Zealand's fisheries enough? Does such a role implicitly recognise an alleged duty of the Crown in protection of the fisheries as a whole? Has the Sealord deal altered any alleged rights of Maoridom to the shared "management and control" of New Zealand's fisheries sought in the statement of claim?

The possession of foreshore resources and their protection are closely entwined here. The following is a description of the tangata whenua's approach, as perceived through official records, to one resource within the area claimed: the toheroa.

On 29 September 1924 a deputation, introduced by Tau Henare, comprising W Rikihana, MLC, Terima Teiki and Tamaho met with the Minister of Marine, G J Anderson, to ask that the toheroa beds between Whangape and the entrance to the Hokianga harbour be protected. They claimed that Europeans took and sold toheroa and suggested that tangata whenua form a committee to prevent further taking in this manner and to look after the beds. But they did not claim exclusive rights. Their objection was to the methods used by Pakeha (digging with spades instead of hands) and the effect this had on the beds. The Minister of Marine offered to prosecute Pakeha illegally taking toheroa for sale (A6:137-138).279

On 5 December 1924 L F Ayson, Chief Inspector of Fisheries, accompanied by Tau Henare and Inspector Flynn, met with tangata whenua at Panguru regarding the toheroa beds and fisheries. The following day he inspected the beach. Ayson's report added to what the deputation had stated. The meeting proposed that the committee should consist of tangata whenua living beside the beach, and that not only should it be compulsory that toheroa be taken in the Maori way (by hand), but that there be a "close time" during the spawning season, December to February. They were not opposed to the sale of toheroa in itself, but were "decidedly opposed to a canning factory being erected near the Whangape beach". Ayson noted that the protective measures asked for seemed "quite reasonable" and told the meeting that "the Department would do what was necessary to conserve this food for the natives"

279 Under the Fisheries Act 1908 the Marine Department was to issue licences for taking toheroa in certain districts; G.J.A. "Notes of a deputation representing Natives which waited upon the Minister of Marine (Hon. G. J. Anderson) at Wellington on the 29th September 1924", nd, M1 2/12/319 I, National Archives, Wellington
The next day Chief Inspector Ayson met with tangata whenua at Mitimiti. It was recommended there, in addition to the above, that selling licences be discharged by the department on the advice of the local committee. The committee was named as consisting of Himiona Kamira, Ngakuru Pene Haare, Henare Matini, Moa Tahana, Mane Hotere, Winiata Hone and Eruera Rikihana. As to the state of the toheroa beds, Ayson thought that they were of much smaller than average size and noted:

They ... certainly are not sufficiently plentiful to lease for canning, in fact we consider they will require to be carefully protected in order to maintain a sufficient supply for the natives' food. It would seem that long before the arrival of the pakeha, the coast natives made a trade of taking Toheroas inland and exchanging them for other articles of food. They still continue this trade, but instead of exchanging Toheroa for other food they now sell them to the inland natives and Europeans for cash. (A6:129)

An order-in-council was drafted under s5 of the Fisheries Act 1908, including the following regulations:

1. A close season from the 1st day of December in each year until the last day of February following is hereby prescribed ... during which close season it shall be unlawful to take or have in possession toheroas from the said area.
2. During the open season it shall be lawful to take toheroas for local consumption, but not for sale or barter, except with the consent of the Minister first obtained. [Added in pencil "and on payment to the Minister of a fee of one pound for such consent."]
3. The taking of toheroas shall be under the control of a Committee to be from time to time appointed by the Minister.
4. No spade or other blade implement shall be used for taking toheroas.
5. Any person committing a breach of any of these regulations is liable to a fine of £20. (A6:123-124)

At the time of drafting it was clear that at least some Marine Department staff were concerned not to allow tangata whenua to sell toheroa without some form of built-in

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280 A F Ayson, Chief Inspector of Fisheries to Secretary of Marine, 20 December 1924, M1 2/12/319 I, National Archives, Wellington

281 Chief Inspector of Fisheries to Secretary of Marine, 20 December 1924, M1 2/12/319 I, National Archives, Wellington

282 Draft order-in-council, M1 2/12/319 I, National Archives, Wellington
control (A6:121).283

The draft was circulated for comment. A S Hefford (later if not already Chief Inspector of Fisheries) stated of the regulations that:

so far as they go they appear be quite sound and I am fully in favour of the selling license clause.

I do not know whether paragraph three means that the local Committee will be empowered to make their own by-laws additional to those of the O/C (e.g. for imposing size limits or time limits in the fishing). If they are competent it would be well if they could, for conditions are likely to vary from year to year. The effectiveness or otherwise of the proposed regulation will certainly rest upon them, and it will be an interesting administrative experiment. (A6:117)284

The gazetting of the regulations for the toheroa beds was considered in 1925 but deferred until later and apparently dropped (A6:115).285 From this point on it appears from the correspondence sent out by the Marine Department that the draft order-in-council was to all intents and purposes forgotten, although the officials involved in the department largely remained the same.

Regardless of the lack of formal acknowledgment, the local committee had effectively been in operation since Ayson’s 1924 visit, however in 1930 they found that people would no longer take notice of the rules which had been developed, and Barney Hotere wrote to the minister in June of that year requesting confirmation that these rules were lawful (A6:116).286

The committee continued its work, occasionally writing to officialdom to report on its regulations and their effectiveness. In 1933 Henare Matini wrote to the Native Minister, Apirana Ngata, suggesting reappointment of members and setting out the regulations, which were translated as follows:

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283 G C Godfrey, Secretary of Marine to Minister of Marine, 25 August 1925, M1 2/12/319 I, National Archives, Wellington

284 A S Hefford to Secretary of Marine, 10 June 1926, M1 2/12/319 I, National Archives, Wellington

285 Hefford to Secretary of Marine, 28 April 1930, M1 2/12/319 I, National Archives, Wellington

286 Barney Hotere to [Minister of Marine], nd, M1 2/12/319 I, National Archives, Wellington
1. That the committee's first object is to protect and conserve our Toheroa beds.
2. That the hoes for digging the Toheroas should not be more than 4 inches wide.
3. No Toheroas should be dug and left on the surface.
4. The committee to have the right of creating a reserve on that portion of the beach where it is found that the Toheroa are fast decreasing.
5. No Toheroas to be taken during the breeding season.
6. The jurisdiction of the committee to include the protection of the tribal mussel beds.
7. That the use of hoes for obtaining mussels is prohibited.
8. That no one be permitted to obtain shell fish from those parts of the beach adjacent to our pas on Sundays and for this reason the Europeans are to be prohibited from these areas except to the South of Matihetihe at the Wahopai and the mouth of the Hokianga. (A6:106-109)

From this correspondence it was taken that the tangata whenua believed that the beds were a native reserve. The department thought this to be inconsistent with the fact that local Maori were known to have done "quite a considerable trade ... selling toheroas in kits containing from one to one and a half dozen at 2/- per kit", for which they should have selling licences. Millier, on behalf of the Secretary of Marine, wrote to Hefford on this subject stating:

In these circumstances the beds should be administered under the Toheroa Regulations, and while the Native co-operation would be all to the good, the fact is the Committee has no legal standing.

Several of the proposals submitted are already provided for in the Regulations; as regards the others I should like to have any remarks you desire to make. (A6:105)

When in 1943 Wiremu Tahana, the chairman of the beach committee, and Himiona Kamira, the chairman of the tribal committee, wrote to the Marine Department to request a licence to sell toheroa, the department, whose attitude on the whole had not been favourable to the selling of the toheroa, obtained local reports on the beds. The

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287 Henare Matini to Apirana Ngata, 7 June 1933, M1 2/12/319 I, National Archives, Wellington

288 Millier, for secretary [Marine Department] to Chief Inspector of Fisheries, 7 July 1933, M1 2/12/319 I, National Archives, Wellington
reports came in that stocks were insufficient (A6:163-169).\(^{289}\) although one informant noted that there had been two drownings in the locality recently and for this reason fishing of all description, and the taking of shellfish including the toheroa, was prohibited (A6:163).\(^{290}\)

As a result, Hefford suggested that the selling of toheroa not be allowed and that the regulation which limited the taking of toheroa to 80 per person per day for Maori and 30 per person per day for Pakeha be strictly enforced. He also suggested the need for some recognised official supervision of the beach; he suggested the police constable at Kohukohu or Wiremu Tahana. He noted that the tribal regulations, as exemplified by the close season, were an indication of the recognition of the need for conservation and stated that although there was no legal authority for the committee to make or enforce such a restriction it was a commendable step and it seemed "advisable to amend our regulations to agree with this close season for the Mitimiti Beach". He suggested that interviews be conducted with locals (A6:162a).\(^{291}\)

The committee again wrote, advising of new appointments, in March of 1944. The letter submitted the committee's "by-laws" for consideration as to "whether we should continue to act under them or dispense with them or whether they should be amended". These were:

1. **Firstly** The close season for taking Toheroas to take effect from the 1st January to the 30 March in each and every year, and the open season as from the 1st April in each and every year.
2. **Secondly** The blade of digging spades must not exceed four inches in width.
3. **Thirdly** The number of [toheroas] for each home must not exceed 200.
4. **Fourthly** Toheroas from this shore must not be sold.
5. **Fifthly** Person or persons are prohibited from lighting fires on kutai rocks.

The letter continued:

We would be much obliged if you would advise us of the official recognition of our committee, so as to enable us to function with authority and what steps

\[^{289}\] E G Kendall, Mitimiti to Secretary of Marine, 15 November 1943, M1 2/12/319 II, National Archives, Wellington; Chas Daniel, Senior Inspector of Fisheries, Marine Department to superintendent, mercantile marine, 26 November 1943, M1 2/12/319 II, National Archives, Wellington

\[^{290}\] Chas Daniel, senior inspector of fisheries, Marine Department to superintendent, mercantile marine, 26 November 1943, M1 2/12/319 II, National Archives, Wellington

\[^{291}\] Hefford to minister, 15 December 1943, M1 2/12/319 II, National Archives, Wellington
to take in the case of breach of any of the said by-laws. (A6:160-162)292

It was then pointed out that the first "by-law" had been in force "since the days of our ancestors".

Hefford suggested that the "by-laws" be incorporated into the marine regulations where not already in existence, and that the chairman of the committee be appointed an inspector of sea-fishing. This was agreed to by the committee (A6:159).293 Over the years a number of such appointments of tangata whenua were made.

All appeared well for the next four years, one report stating that the toheroa on Mitimiti beach were in "splendid condition" (A6:157a). In July 1948 a permit was sought to take toheroa for a hui to celebrate Father Wanders jubilee, 25 years as a priest. This was granted by the Marine Department (A6:152). However, in November of that year, Hipiriona (Barney) Hotere, an honorary fisheries officer, sent word that the taking of toheroa was getting out of hand. He wrote:

After sending you collect [the] telegram re. depletion of toheroas I [thought] I'd send you [a] full report on same. Lately I have trucks from all over the district at the average of 20 trucks a month and on each truck about 30 people. This has been going on for about 3 months now. (All Maoris of course) and you can imagine the amount of toheroas they consume (legally), I have met Mr Taylor and the department's surveyor and we have discussed the position. We all recommended closing beach as soon as possible. (A6:150)294

At the same time, reservations were expressed as to Hotere's efficacy as a fisheries officer. The local Inspector of Fisheries, A H Taylor, suspected that he was accepting bribes to let people exploit the beach (A6:148).295 These statements were not accepted by the Secretary of the Marine Department. He felt that the complaints regarding Mr Hotere were "too sweeping and generalised and without factual support too dangerous to be of much value" and stated "[t]his beach is in the main a beach that is utilised by Maoris only so that it is the Maoris who will suffer if stocks are

292 Chris Hotere, secretary of the committee in charge of shore, Hokianga, to secretary, marine board, Wellington, 6 March 1944, M1 2/12/319 II, National Archives, Wellington
293 Hefford, Chief Inspector of Fisheries to Secretary of Marine, 5 April 1944, M1 2/12/319 II, National Archives, Wellington
294 H Hotere, fishing officer, Mitimiti to Secretary of Marine, 8 November 1948, M1 2/12/319 II, National Archives, Wellington
295 A H Taylor to Secretary of Marine, 30 November 1948, M1 2/12/319 II, National Archives, Wellington
However, it was clear that Marine Department officials were reluctant to close the beach due to the anticipated lengthy legal process it would entail. In later correspondence with Taylor regarding the issue, the secretary stated that "no move can be made to close this beach except on the recommendation of the Tribal Executive Committee. They have not made any such recommendation" and repeated that "[a]s it is used almost solely by Maoris they will be the sufferers if complete depletion takes place" (A6:146a).

This appears to suggest that, in the eyes of the Secretary of the Marine Department, the committee held the ultimate say over at least closure of the beach, albeit having to receive official recognition of its own regulations through the Marine Department. He also seemed to think that the Crown was right in abdicating any duty it may have to protect natural resources.

By March 1950 the toheroa on Mitimiti beach were all undersized and the taking of toheroa was illegal. In 1952 the committee, in conjunction with the fisheries officer, requested that the beach be closed for 12 months (A6:141-143).

This aspect of local history shows that local Maori constantly indicated their concern for the depletion of local resources and put in much unpaid labour to conserve the resource over a period of at least the 28 years referred to here. The Crown was responsive to these efforts, recognising the importance of this area, but did not give up ultimate control, although it appeared to abdicate any responsibility in the late 1940s, when officials noted that as the beach was utilised almost solely by Maori, Maori were the ones who would suffer should complete depletion take place. While the tangata whenua were clearly frustrated by their lack of legal standing, they had some measure of "management and control" of this resource, but this was without any pecuniary backing for conserving the resource as may be granted an official conservation officer.

As indicated at the beginning of this section, the questions raised by this aspect of the claim are wide ranging. Does the Crown have a duty to protect the fisheries? If so (a) has it always carried out its duty in the past, (b) was the Crown's obligation upheld before the Sealord deal was signed, (c) does this affect the status of the Sealord deal and (d) have the Crown's Treaty obligations with respect to protection of New Zealand's fisheries altered following the Sealord deal? Are Maori Treaty rights adequately covered by the "participation" provisions of the Treaty of Waitangi?

296 W C Smith, Secretary of Marine to A H Taylor, inspector of fisheries, Marine Department, 8 December 1948, M1 2/12/319 II, National Archives, Wellington

297 Smith to Taylor, 23 November 1949, M1 2/12/319 II, National Archives, Wellington
(Fisheries Claims) Settlement Act 1992? There is clearly a need for greater definition of responsibilities with regard to protection of New Zealand's fisheries with respect to the Treaty.

4.4 Possession and Protection of the Mudflats

Overview of Crown policy with respect to mudflat reclamation in the early twentieth century

4.4.1 Under s39 of the Harbours Amendment Act 1910, the Governor-General in council was empowered to grant rights to lease lands between high and low water marks "which belong to the Crown" and on which at high water spring tides the depth of water is not sufficient for purposes of navigation for reclamation for up to 21 years (A6:170). There was no guarantee that such a lease was renewable. Prior to this, "according to the provisions of "The Harbours Act, 1908," such a work could not be authorised without the sanction of a special Act of Parliament" (A7:289).

A number of local Pakeha farmers in the Hokianga applied for these licences, seeing it as an opportunity to expand the area available to them for farming or cultivation. Once a letter inquiring into the possibility of obtaining a lease had been received by the Marine Department, it was the usual practice to request that the applicant provide two copies of a plan of the area sought for lease. One of these plans would be sent to the local harbourmaster and/or the marine or district engineer of the public works department for their opinions as to whether the application should be granted and what a fair rental would be. At this time the usual rental was 1s per acre per annum for the first ten years and 2s 6d per acre per annum for the remaining 11 years. The order-in-council granting the licence was then published in the gazette. The gazette notice was sent to the local harbourmaster or pilot and signalman, who would collect the first rent installation and give a copy of the order-in-council to the lessee.

Most lessees found 21 years too short a period in which to reap much return for their investment, and this complaint, together with the mounting pressure to allow lessees to freehold the land reclaimed, resulted in a further amending act.

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288 A considerable amount of further work has been done on mudflat and foreshore reclamations for other claims before the tribunal. In particular, documents produced for the Muriwhenua and Napier Inner Harbour claims may be useful to subsequent researchers of this aspect of this claim.

289 George Allport, Secretary of Marine, to John J Enright, Rawene, 26 January 1909, M1 4/675, National Archives, Wellington

300 See A6 pp 262-285, 253-256, 247-249 (M1 4/765, National Archives, Wellington). Hokianga settlers were prominent movers and shakers here.
Section 4(6) of the Harbours Amendment Act 1921 provided for freeholding such licences (A6:173-174). This was carried on under s146(6) of the Harbours Act 1923, which provided that any lease may contain "a provision entitling the lessee to acquire the freehold of the land comprised in the lease upon terms and conditions to be prescribed by regulations" (A6:175-176). The gazetted regulations pursuant to this section were eagerly awaited by lessees.

In 1930, the then Secretary of the Marine Department, G C Godfrey, released mudflat regulations under s146 of the Harbours Act 1923 (A6:335,230-233). Licensees were notified they could surrender their leases and apply to the Commissioner of Crown Lands for a lease under these regulations.

In order to obtain the benefit of the regulations a new proclamation had to be issued setting the land aside for the purpose of reclamation. A formal deed of lease was then granted by the Commissioner of Crown Lands (A6:327). There were at least two areas under reclamation in the early twentieth century within the area presently studied: the Vujcich reclamation at Tapuwae and Robert Holland's reclamation at Whakarapa (Panguru). But before looking at these two specific reclamations, I will look at the response local Maori had to these leases in general.

**The tangata whenua's response to these provisions**

4.4.2 On 31 January 1922 a copy of a minute on the Native Department’s file was sent to the Secretary for Marine. It was a petition made by Re Te Tai Papahia and others to the Native Minister and it read:

1. Our lands on the banks of the Hokianga river are under water at high tide and are left dry at low tide.
2. These sand banks are said to be in the hands of the Marine Board and that they do not belong to the Maoris.
3. We have heard that they are to be either leased or sold by the Marine Board to Europeans.
4. We strongly object to these our mud banks being vested in the Marine Board.
5. These lands have not been sold by us to the Government or to any Board.

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301 Secretary of Marine to Minister of Marine, 25 October 1916, M1 4/675, National Archives, Wellington


303 B W Millier, Assistant Secretary of Marine to Messrs Kirkpatrick and Brook, barristers and solicitors, 23 July 1932, M1 4/744, National Archives, Wellington
6. A provision in the Treaty of Waitangi states that sandbanks and deltas are ours.
7. We declare that we are the owners of these lands and not the Marine Board.
8. Your petitioners strongly appeal that this matter be enquired into so that investigation of title to these mud banks could be held. (A6:261)

The petitioners did not receive a comprehensive reply. They were informed that "where the salt water of the ordinary tide flows over land, that land belongs to the King", that the Marine Department managed these areas for the King, and the governor could lease but not sell them (A6:260).

Time has not permitted further research for any further complaints or other responses to the general issue of mudflat reclamation. At this time the survey for Holland's lease of Ngakaroro mudflats would have just been completed, those of Vujcich at Tapuwae having been done over a year earlier. However, the importance of this petition for this claim in particular cannot be overlooked. It is clear, from this one petition, that this was a significant issue for Te Rarawa ki Hokianga.

The Vujcich reclamation at Tapuwae

4.4.3 In April 1917, Mijo Vujcich and one other person (Vukovich) sought a licence from the Marine Department to lease a portion of the mudflat on the southern bank of the Tapuwae river. The area sought for lease was around 100 acres comprising a strip extending from near the mouth of the Tapuwae river to a distance of around a third of a mile upstream. It partly fronted their own property (Vujcich describes his property as Tapuwae 3A) and partly fronted a Maori owned block of land known as Puketoro "No 1" or "Remanga" (A6:358). Vujcich then enlisted and did not re-apply for a licence until July 1919. At this time he was intending to buy his partner's interest in the adjoining land (A6:353). A licence to occupy and reclaim 50 acres was given by order-in-council on 17 November 1919, but because Vujcich considered that the expense of reclaiming only 50 acres would be too high, this was revoked and a fresh one issued on 26 January 1920 to him for 165 acres (A6:345-351).

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304 Re Te Tai Papahia and others to Native Minister, nd, M1 4/765, National Archives, Wellington
305 Under-secretary to Re Te Tai Papahia and others, 30 March 1922, M1 4/765, National Archives, Wellington. At this point this statement was correct, although later in the year the 1921 Act was passed allowing freehold of lands leased for reclamation.
306 Reed, Miller and McCown, barristers and solicitors to Under-Secretary of Marine, 11 April 1917, M1 4/744, National Archives, Wellington
307 Reed, Miller and McCown, barristers and solicitors to Under-Secretary of Marine, 16 July 1919, M1 4/744, National Archives, Wellington
In 1923 Vujcich took steps to assign the occupation licence to his wife, Kathleen Vujcich. In a covering letter by the solicitors handling this transaction, it is noted that Kathleen Vujcich intended to improve the land. This transfer was to be a condition precedent to her expenditure on such improvement (A6:339-342). But it appears this did not occur. On 3 March 1933 Mijo Vujcich transferred a half interest in the licence to his brother, Ivan Vujcich (A6:326).

Mijo Vujcich had not always been able to make full payments of the rent required by the Marine Department. On 7 May 1934 he and Ivan Vujcich wrote to ask that the payments that had been made to date be considered full payment as: (1) they only occupied 146 acres as opposed to the 165 licensed; (2) there had been a deduction of 20% on all marine leases for the last five years; and (3) farmers were undergoing hard times. The first reason given was the main one and the Vujcich brothers sent a survey, taken by the Crown to establish title, indicating the area to be 146 acres (A6:323). The rental was reduced by an amending order-in-council dated 3 September 1934 (A6:314).

On 2 March 1937, they requested that tenure of the land be placed under s146 of the Harbours Act 1923 "thus giving the occupiers all the advantages contemplated by that section" (A6:303). The plan showing the area used under the licence, plan 27907, was forwarded by the Under-Secretary of Lands and contained the following accompanying letter regarding the Crown’s riparian rights:

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I enclose herewith copy of the sun-print shewing the area held under license from your Department. You will note that the area includes that fronting the Te Puketoro or Remana Block which, presumably, possesses riparian rights.

The Commissioner would be pleased to learn whether your Department took any action to secure the transfer of riparian rights to the Crown when the
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308 L B Campbell, Secretary of Marine to Under-Secretary of Lands, 8 June 1934, M1 4/744, National Archives, Wellington. This was shown on plan MD 5077. See also NZG 1920 p 433.

309 M and J Vujcich to Marine Department, 7 May 1934, M1 4/744, National Archives, Wellington

310 NZG 6 September 1934, p 2807, see M1 4/744, National Archives, Wellington

311 T W McCown, barrister and solicitor to Under-Secretary of Marine, 2 March 1937, M1 4/744, National Archives, Wellington
license was issued by your Department to Messrs Vujcich. (A6:299)\textsuperscript{312}

This appears to assume there were Maori rights which had to be transferred before the Crown could claim its rights. The question of the Crown's riparian rights was avoided, as on the letter dated 19 August 1937, signed "GH", it was noted "Vujcich's wife is one of the owners and he said that she was transferring her interests in other land to obtain ownership of this block" (A6:229).\textsuperscript{313} This suggests Kathleen Vujcich was seeking to buy other shares in the Puketoro or Remana block. Among other considerations this connection may have contributed to Vujcich's lease being of less concern to tangata whenua than that of Robert Holland, described below.\textsuperscript{314}

However, one reference has been found to date showing local Maori objection to reclamation at Tapuwae in general. In November of 1923 Hohepa Himi Hare wrote to Tau Henare asking that the mudflats from the mouth of the Tapuwae river to its source and along its tributaries not be included in the Marine Department's leases, as his people obtained food from these areas. He stated that his application was directed particularly to those mudflats fronting their interests in land situated along the stream. It appears from his letter that the tangata whenua owned Tapuwae 1 and 4, but were leasing them and did not wish the Marine Department to lease the mudflat fronting them (A6:362).\textsuperscript{315}

I am not aware of lessees of land at Tapuwae other than Vujcich at this stage. It is clear that at this time, Maori throughout the Hokianga (A4: 122-123;A6:374-376),\textsuperscript{316} and at many other places beyond it, were concerned about the reclamations in their areas and the very apparent loss of their rights to use these areas for their own purposes.

\textit{The Holland reclamation at Whakarapa - the Ngakaroro mudflats}

4.4.4 The first official recognition of a request by Robert Holland to lease or purchase part

\textsuperscript{312} W Robertson, Under-Secretary of Lands to Secretary of Marine, 11 August 1937, M1 4/744, National Archives, Wellington

\textsuperscript{313} Ibid

\textsuperscript{314} See pages 105-106 for some of the reasons why the tangata whenua objected to the Whakarapa reclamation.

\textsuperscript{315} Hohepa Himi Hare to Tau Henare, 21 November 1924, M1 4/1660, National Archives, Wellington

\textsuperscript{316} William Topia, Motuti to Native Minister, 29 October 1924, ND 1926/386, National Archives, Wellington; and later, A C Smeaton, District Field Inspector, to the Commissioner of Crown Lands, north Auckland, 18 March 1940, M1 4/3279, National Archives, Wellington
of the Whakarapa mudflat I have found to date was made in October 1916 (A7:288). This is at odds with King’s assertion that Holland took a lease from the Marine Department in 1914.

It was not until November 1920 that plans were ready to forward to the Marine Department (A7:278), and not until January 1921 that John Mitchell, the pilot and signalman at Hokianga, sent the plans to the Marine Department. Mitchell stated:

I have inspected this site but find that the natives who own the adjacent land are objecting to Mr Holland acquiring this area. The names of the objectors are as follows.-

Owner of section No. 1 Kawau Hoa.
" " " 2 Ngarangi Pire & others.
" " " 3 Pio Morunga, Tame Pio & others.
also Honi Teihi.

Mr. Honi Teihi informs me that the natives are endeavouring to obtain this mudflat through the Native Land Court.

Should this site be leased, I would recommend that the annual rent be the same as for other flats of a like nature, namely, 1/- per acre per annum for the first ten years, and 2/6d. per acre per annum for the last eleven years. (A7:277)

The plan was later amended by McCarthy, the surveyor:

for the purpose of lessening the area by 2 1/2 acres and allowing a chain reserve between the mud-flat and the Maori land. This road along shore line is badly needed to give access to other sections further along, and in making [the] plan I omitted to allow the chain reserve. (A7:276)

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317 H M Skeet, Commissioner of Crown Lands to Under-Secretary for Lands, 16 October 1916, M1 4/675, National Archives, Wellington

318 King op cit p 11

319 R Holland to Secretary of the Marine Department, 10 November 1920, M1 4/675, National Archives, Wellington

320 John Mitchell, pilot and signalman, Hokianga to Secretary of Marine, 7 January 1921, M1 4/675, National Archives, Wellington

321 M McCarthy, field surveyor, Rawene to secretary [Marine Department], 24 January 1921, M1 4/675, National Archives, Wellington
It is not clear whether this was in response to complaints made by tangata whenua or whether this was merely to provide other land owners generally with access. The plan was not examined or approved by the Department of Lands and Survey.

The plan, MD 5318,\textsuperscript{322} showing the 63 acres applied for lease, was sent to the district engineer, who was asked to look into the matter of the lease and to advise "whether there is any objection" to the lease being granted (A7:270).\textsuperscript{323} The district engineer reported that Mr Holland did not own any land around the foreshore, but had land some distance inland.\textsuperscript{324} He stated:

The Natives are now objecting to the lease being granted to Mr. Holland. Apart from this objection, I do not know of any other reason why the lease should not be granted, as the granting of same would, I consider, be in the best interests of the District. (A7:269)\textsuperscript{325}

The desirability of mudflat reclamation was a prevalent view at the time, and the perceived reasons for Maori unrest (see p 105) were not considered strong enough to outweigh it.

After repeated requests for his application to be answered, with the "objection of the Natives" apparently having been considered prior to the licence being issued (A7:261),\textsuperscript{326} Holland received permission to lease the area from the Marine Department, and an order-in-council permitting the lease was signed on 24 January 1922 (A7:265).\textsuperscript{327} No mention was made of the complaints of tangata whenua in

\textsuperscript{322} Copy not held on file.

\textsuperscript{323} F W Furkert, marine engineer to district engineer, public works department, Whangarei, 10 June 1921, M1 4/675, National Archives, Wellington

\textsuperscript{324} Holland's land appears to have been Whakarapa 61 and 62. He bought Whakarapa no 62 some time after 1916 (when the district Maori land board sold the land to Andrewes) but before the early 1930s. This is probably the land referred to above. Whakarapa no 61 was subdivided into two blocks in 1912, Whakarapa 61A was sold to Duthie in 1916 and Holland bought Whakarapa no 61B in the early-mid 1930s. In 1936 it was suggested that Holland exchange Whakarapa 62 and 61B, along with Whakarapa no 61A, which he was to acquire, with the forest service for part of Waihou Lower A42.

\textsuperscript{325} District engineer, Department of Public Works, Whangarei to marine engineer, 26 July 1921, M1 4/675, National Archives, Wellington

\textsuperscript{326} A A Park to Mr G Sherwood, 18 October 1922, M1 4/675, National Archives, Wellington

\textsuperscript{327} NZG 2 February 1922, p 236, see M1 4/675, National Archives, Wellington
the note recommending Holland's lease to the minister (A7:266,264).\textsuperscript{328}

In September of 1924 (and a number of times subsequently) Holland wrote to the Marine Department, requesting that he be able to lease a small extra piece of land at Whakarapa between his section and the main road (A7:259).\textsuperscript{329}

Around this time William Topia wrote to the Native Minister asking what rights Maori still had over their mudflats, as Europeans were now working them (A4:140-143).\textsuperscript{330} Later in the month he elaborated on this, stating that they had no objection to Europeans gathering shellfish for their own use or for sale, but that they did object to them "farming our mud flat in front of our own land" (A4:121-124).\textsuperscript{331}

It was also at this time that the deputation introduced by Tau Henare, including Terima Teiki and Tamaho, met with the minister in Wellington regarding the depletion of the toheroa (see p 89). Shellfish depletion was intimately linked with the mudflats issue and the two were produced to the minister as part of the same take.\textsuperscript{332} Notes taken regarding this visit provide some insight into local Maori concerns (A7:296-297;A6:137-138).\textsuperscript{333}

Terima Teiki stated that the mangrove flats adjoining their lands and homes at Waihou and Whakarapa inlets, Motuti and Wairae\textsuperscript{334} were being leased by the Marine Department to Europeans who owned farms further inland. He stated that they wished to be allowed to "work" the mudflats adjoining their lands themselves;

\textsuperscript{328} Robert Duncan [Secretary of Marine] to Minister of Marine, 13 January 1922, M1 4/675, National Archives, Wellington; Secretary Marine to pilot and signalman, Hokianga heads, 4 February 1922, M1 4/675, National Archives, Wellington. The file records that the minister did look into this matter between October 1922 and February 1923 following a representation by Tau Henare. See A7:260-261.

\textsuperscript{329} Robert Holland to Minister of Marine, 14 September 1924, M1 4/675, National Archives, Wellington

\textsuperscript{330} William Topia to Native Minister, 13 September 1924, ND 1926/386, National Archives, Wellington

\textsuperscript{331} Topia to Native Minister, 29 September 1924, ND 1926/386, National Archives, Wellington

\textsuperscript{332} The issue of the sale of Te Kauae o Ruru Wahine block was also being discussed as part of the local Maori take to the Crown. See A4:143.

\textsuperscript{333} "Notes of a deputation representing Natives which waited upon the Minister of Marine (Hon. G. J. Anderson) at Wellington on the 29th September, 1924", nd, M1 4/1746, National Archives, Wellington. See also the notes recorded in M1 2/12/319 I, National Archives, Wellington.

\textsuperscript{334} I believe this should be Waireia.
they did not ask to work those mudflats which did not adjoin their lands. He stated that in order to reach the river (when transporting their produce and obtaining goods) they had to trespass over the mudflats (A7:296). However, despite the assurance given by the minister that in future local Maori would be given an opportunity to object to leases, and the marking of the areas of concern on a map supplied following L F Ayson’s visit regarding the toheroa and mudflat questions (A7:293), the problem at Whakarapa did not go away. Te Rarawa ki Hokianga then took the matter into their own hands.

On 2 March 1925, a summary of what happened was given in an article published in the Auckland Star, entitled "Title to Foreshore claimed by Natives". It read:

Mr. F. H. Levien, S.M., presided over a crowded Magistrate’s Court at Rawene yesterday, when Robert Holland, of Panguru (Mr. T. W. McCowan) sued Ta Kuira Teihi and Gertrude Witana, aboriginal natives, of Panguru (Mr. J. J. Sullivan) for alleged trespass and damage to property held by him under license from the Marine Department. The two natives, it was stated, dug out and demolished part of a retaining wall erected by Holland for the purpose of reclamation.

... On the 15th September last a large number of natives assembled on the property, and, armed with shovels, etc., proceeded at once to demolish the wall erected by Holland. The only natives that could be identified at the time were the two defendants.

... Mr. Sullivan, on behalf of the natives, stated that he would lead evidence to show that the mudflat was really native land, and that such had never passed into the possession of the Crown or the Marine Department; that, consequently, there was a question of title involved, and the magistrate had no jurisdiction to try the case. In support of this it would be shown that the area in question was not covered with water at average high tides; that it was covered, if at all, only at high spring tides, and was therefore native land - never alienated. It would also be shown that the natives crossed and recrossed the area in dispute from time immemorial to pursue their fishery operations, and, in fact, on one occasion used portion of the land as a racecourse. Legal authorities were quoted in support of the defendants’ contention, to show that the land was native property, and, as a question of title was involved, and arose directly and not incidentally, the magistrate had no jurisdiction.

Evidence on the lines of counsel’s statement was then given by the natives.

335 Ayson, Chief Inspector of Fisheries to Secretary of Marine, 20 December 1924, M1 4/1746, National Archives, Wellington
The judge chose to reserve his decision.

By 11 June 1925 Ira Anihana had placed an application of investigation of title to the area (A7:249). As a result of this, G C Godfrey, the Secretary of the Marine Department, explained what the department’s approach had been. He wrote:

I may state that, when the original application was received from Mr. Holland, a report was obtained from the District Engineer of the Public Works Department, and he reported that the natives in the locality were objecting to the lease, but that in the interests of the District the lease should be granted. From what could be gathered at the time, it appeared that the reason for the objection was that the natives were endeavouring to get possession of these mud flats.

The Department could not accept this as a logical objection to the granting of the lease, and this was duly given. (A7:247)

He later stated that he believed that the district engineer, although noting tangata whenua objection to the lease being granted, doubtlessly based his opinion to go ahead with the lease "on the fact that Mr. Holland was prepared to do something with the mudflats and that the natives, in all probability, would do nothing with them". He also stated that "[a]lthough the license to reclaim was granted, I do not think it should have been without the consent of the adjoining owners" and suggested that in the future no tidal flat reclamation licence should be granted except with the owner of the adjoining property, or, when the person who proposed to reclaim was not the adjoining owner, then with the consent of the adjoining owners. He suggested that nothing be done until the application for investigation of title was heard (A7:242-243).

The application for investigation of title was due to be heard in the Native Land Court at Rawene on 18 August 1925. The question of Holland's additional lease was left until a decision had been made by the court (A7:245).

336 "Title to Foreshore Claimed by Natives" The Star Auckland, 2 March 1925 in M1 4/675, National Archives, Wellington

337 Godfrey [Secretary of Marine] to Under-Secretary of Lands, 30 July 1925, M1 4/675, National Archives, Wellington

338 Secretary of Marine to Minister of Marine, 18 September 1925, M1 4/675, National Archives, Wellington

339 [] to Mr R Holland, nd, M1 4/675, National Archives, Wellington
The Crown representative was absent when the case came to court and it could not proceed. Takuira Te Ihi, Iri Anihana, Matangi Te Wake, Tamati Peita, Pakhi Peita, Kanara Topia, Kanaru Ponoweo and others were there and had "had a talk outside". Takuira Te Ihi asked that some of their objections be noted. He listed the following:

(1). Ancestral right
(2) Permanent occupation
(3) Death of an ancestor on this block which made part of that land "Tapu".
(4) Use of the land for access to the landing.
(5) Use for fishing purposes and also for gathering shellfish.
(6) Also a "rahui" or reserve of our elders giving them a particular right to catch fish in the neighbourhood.
(7) It is the sea frontage to our Whakarapa sections.
(8) Our children use the land for going to and from the school, - our elders used it too
(9) Our ancestors dried their nets there all along the water's edge.
(10). Part of the land is never covered even by high spring tides - grass is growing on this part.
(11) The great bulk of the land is only covered about once a month - sometimes only once in two months.
(12) So dry was this piece that many years ago we used to use it as a racecourse. I saw it myself so used.

13. We say that the drainage operations of Mr. Holland have not dried up the land, and in some parts it is more than before partly due to the banks and partly to damage done by floating logs along the edges of the channels.

The court recognised that "there may be special rights of the Natives in this case" and that it was a matter of "considerable urgency". The case was adjourned until November.

In December of 1925 no decision had been given regarding the Whakarapa mudflats. An inspection of the mudflat was made by Judge Acheson and a Crown lands solicitor. The decision was due to be given in Hokianga the following April (A7:232).

On 13 May 1926, at a Native Land Court sitting at Opononi, Judge Acheson reported that under investigation there was definitely an area which was dry, even at the highest spring tides. As the Crown representative had not claimed this as

340 Extract from Hokianga minute book 6 p 24, M1 4/675, National Archives, Wellington

341 J K Mitchell, pilot and signalman to Secretary of Marine, 3 December 1925, M1 4/675, National Archives, Wellington
Crown land and the land was not shown on any title known to the court, Acheson held that it was native customary land, the title to which had not been properly investigated. There were also definitely areas barely covered at high spring tides which he thought might easily be found to be native customary land also. Both these areas were outside the area comprised in Holland’s licence, but within the area claimed by the applicants. Acheson noted that:

As to whether there is a further area which, on survey, will be found to be above the effect of a tide the mean between high neap tides and high spring tides, the Court is unable to say, but it thinks there is. At high spring tide a large area of the flat outside Holland’s piece was found at the time of the Court’s inspection to be covered to but a small depth. (A7:228-229)

Acheson requisitioned a sketch-plan of the Whakarapa mudflats to be prepared by the chief surveyor to show approximately the areas of land above the legal high water mark, being the mean between high neap tides and high spring tides.

The lands and survey department could not complete the plan for some time as it was necessary to take readings to gauge the tide over 15 months (A7:209). Holland wrote to the Marine Department a number of times during this period asking it to protect its "tenant". From September to December 1927 he wrote requesting it to lower the rental as he was unable to do anything with the land as long as the court case was not settled (A7:219-222). In 1930 it was noted that Holland had refused to pay rent for 63 acres for some years and that unless he could obtain a lease for the further four acres (shown on plan MD 5933), he would give up the reclamation (A7:207). The new regulations regarding mudflat reclamation came out in May of this year (A6:230-233; A7:206).

The survey plan requisitioned by the court, plan 12747, was completed and approved by 1 September 1931. The Secretary of Marine noted that it showed that:

a good portion of the area leased to Holland is above the line of mean high-water mark, which is the line adopted for the purpose of proceedings under

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342 Judge Acheson "Ngakaroro block (Whakarapa mudflats) Hokianga. Application for investigation of title" 13 May 1926, M1 4/675, National Archives, Wellington

343 Court regulations 19 and 20 provided that the court must have before it either an approved plan or a sketch plan approved by the chief surveyor and accepted by the court as sufficient for the purposes of investigation.

344 D M Leay, officer in charge, Hokianga heads, to Secretary of Marine, 17 May 1930, M1 4/675, National Archives, Wellington

345 Regulations, M1 4/765, National Archives, Wellington. See also Secretary of Marine to Marine Department, Wellington, 26 May 1930, M1 4/675, National Archives, Wellington.
the Crown Grants Act, 1908.

But he saw a conflict:

between the Crown Grants Act and the Harbours Act. The definition of "Foreshore", "Tidal-land" in the latter Act is "such parts of the bed, shore, or banks of a tidal water as are covered and uncovered by the flow and ebb of the tide at ordinary spring tides", whereas the Crown Grants Act refers to ordinary tides. (A7:192-193)

He thought it was clear from the plan that part of the area leased to Holland was above high-water mark ordinary spring tides, and was therefore not "tidal-land" and should not have been included in the lease. In respect of the remainder, he noted, "the question arises as to who has jurisdiction to deal with it", i.e. in whom the title lay (ibid).

The court met at Rawene on 21 October 1931 and the case was adjourned for a special sitting to be held on 28 January 1932.

On 26 November 1931 the Under-Secretary of Lands had informed the Secretary of Marine that:

The Chief Surveyor, Auckland, has now suggested that the question as to whether rights granted under the Harbours Act, 1923, can be defended as against ownership of "customary" land is a matter for legal argument and that counsel should be employed to represent the Crown at the sitting of the Court. This is in accordance with the views expressed at an informal conference in Mr. Prendeville's office at which you were present.

On further consideration, it appears to me that the Native Land Court is not competent to decide, in effect, whether or not the Harbours Act definition of high water-mark is paramount to the Crown Grants Act definition, and that the proper thing to do is to ask the Native Land Court to state a case for the Court of Appeal. (A7:194)

A number of adjournments followed. The case was again before the Native Land

346 Secretary of Marine to Solicitor-General, 4 December 1931, M1 4/675, National Archives, Wellington

347 Under-Secretary of Lands to Secretary of Marine, 26 November 1931, M1 4/675, National Archives, Wellington
Court in 1932. However, in April 1935 the Secretary of Marine informed the Solicitor-General that:

final consideration of this case has been deferred from time to time for various reasons, the principal one being the possibility of the Public Works Department taking over, under Section 2 of the Land Laws Amendment Act 1932, and reclaiming it for Native Settlement.

It has now been decided [not] to do this, and I am advised that there is now no ground to enable a further stay of proceedings in the Native Land Court to be made. (A7:163)

He recognised the issue as "a most important question" as "a decision against the Crown would probably have serious consequences in respect of other similar areas". It was agreed that the Crown's approach would be to "oppose the application vigorously from this stage onwards" (A7:152-158).

The legal arguments which arise from 1931 on are not summarised in this report. In the meantime (a) a copy of relevant pages of the Marine Department file held on this case has been provided in the document bank accompanying this report (A7:1-291); (b) the Department of Land and Survey Information hold a file central to this issue which is not held at National Archives in Wellington (this is lands and survey file 15/46/8; it is a land drainage subseries file which I have not had an opportunity to consult); (c) Richard Boast, in evidence given before the Waitangi Tribunal in the Muriwhenua claim in respect of the claim to Wharo Oneroa a Tohe/Ninety-Mile Beach, gave a summary of aspects of the Ngakaroro mudflats case. This has been provided in the attached document bank, along with the relevant annexures (A7:299-333), although further research on this particular issue may require reading of the entire report.

The broader issue of the Crown assumption of ownership of the mudflats and

See Richard Boast "Evidence ... in respect of claim to Wharo Oneroa a Tohe/Ninety-Mile Beach" Wai 45, C3:20-42 and annexures (see A7:299-333). Please note annexures 9 and 10 have been provided in the record of documents for this claim (A7:322-333). Annexure 16, referred to in Boast's report, is already provided in A7:152-158.

Secretary of Marine to Solicitor-General, 4 April 1935, M1 4/675, National Archives, Wellington

E S Smith, Crown Solicitor to Solicitor-General, 30 August 1935, M1 4/675, National Archives, Wellington

File M1 4/675, National Archives, Wellington

Wai 45, C3:20-42 and annexures. See footnote 348.
foreshore needs to be considered here. Te Rarawa ki Hokianga clearly stated "the Treaty of Waitangi states that sandbanks and deltas are ours". However, a secondary issue in relation to Te Rarawa ki Hokianga's claim is whether the Crown had the right to claim ownership of all of the mudflats and the foreshore. One of the points which arises in this report is that objection to reclamations was made where local places and resources of importance to the tangata whenua were threatened or where land adjoining the mudflat had not been sold by the tangata whenua. At Whakarapa, a number of other important objections were made (see pp 105-106). Where, as at Tapuwae, the lessor was related through marriage to local Maori, there appears to have been less concern.
Section 5

General Crown Policy With Regard to Wahi Tapu

5.1 The Claim

The claim states that the Crown has, in the past, failed to protect Te Rarawa ki Hokianga’s wahi tapu on Crown or private land. They seek an assurance that present and proposed legislation will ensure the continued protection of their wahi tapu and make it an offence to disturb such places. Six streams are listed in the statement of claim as being tapu, however, "wahi tapu" within the statement of claim is undoubtedly intended to extend to many other places within the Rarawa ki Hokianga’s rohe.

5.2 Aspects of the Historic Places Act 1993

The current key legislation affecting wahi tapu is the Historic Places Act 1993 which was passed on 17 May 1993 and came into force on 1 July 1993. The purpose of the Act is to "promote the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand" (s4). In achieving this purpose all persons exercising functions and powers under the Act are to recognise, among other things, that the identification, protection, preservation and conservation of New Zealand’s historical and cultural heritage should:

(i) Take account of all relevant cultural values, knowledge, and disciplines; and
(ii) Take account of material of cultural heritage value and involve the least possible alteration or loss of it; and
(iii) Safeguard the options of present and future generations; and
(iv) Be fully researched, documented, and recorded, where culturally appropriate; (s4(2)(b))

Further, such persons must recognise the "relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga" (s4(2)(c)).

Heritage orders and covenants

One means of protecting specific areas is through heritage orders and covenants. Heritage orders applied for under the Resource Management Act 1991 may provide protection for places of special interest and lands which surround such places. They may protect "any place ... of special significance to the tangata whenua for spiritual, cultural or historical reasons" (s189(1)(a)).

Application for a heritage order is made by a heritage protection authority by way of a notice of requirement to the relevant territorial authority that it be provided for
in a district plan (s187). The information, notification, submissions and hearing procedures applicable to resource consents also apply to applications for heritage orders. Notice of the application must be served on "such local authorities, iwi authorities, and other persons or authorities as [the territorial authority] considers appropriate" (s93(f)).

A heritage protection authority may be any minister of the Crown (including the Minister of Maori Affairs acting either on his or her own motion or on the recommendation of an iwi authority), a local authority (acting either on its own motion or on the recommendation of an iwi authority), the Historic Places Trust or any other person approved as a heritage protection authority (s187). The latter could be an iwi authority.

Once a heritage order is included in a district plan, any activity on or use of the land covered by it that would wholly or partly nullify the effect of the heritage order is prohibited without prior written consent of the relevant heritage protection authority named in the plan in respect of the order (s193).

Under s5 of the Historic Places Act 1993 the Historic Places Trust or the Minister of Conservation may give notice of a requirement for a heritage order to protect:

(a) The whole or part of any historic place, historic area, wahi tapu, or wahi tapu area,\(^{353}\) and
(b) Such area of land (if any) surrounding that historic place, historic area, wahi tapu, or wahi tapu area as is reasonably necessary for the purpose of ensuring the protection and reasonable enjoyment of it.

Heritage covenants may be obtained under s6 of the Historic Places Act 1993. The Historic Places Trust may negotiate a covenant to protect, conserve or maintain any historic place or area or wahi tapu or wahi tapu area with any owner, lessee or licensee of the land. The terms and conditions of the covenant are concluded between the parties, but any heritage covenant is subject to the provisions of the Resource Management Act 1991 and the Historic Places Act 1993.

The new register

Section 22 of the Historic Places Act 1993 stipulates that the Historic Places Trust establish and maintain a register of historic places, historic areas, wahi tapu and wahi tapu areas. This is a public register. The purpose of the register is to inform the public, notify owners and assist in protection under the Resource Management Act 1991 (s22(2)). Section 22(3) stipulates that "historic places" be put into two categories, category I being "[p]laces of special or outstanding historical or cultural

\(^{353}\) A wahi tapu is defined in the Historic Places Act 1993 as being "a place sacred to Maori in the traditional, spiritual, religious, ritual, or mythological sense" and a wahi tapu area "an area of land that contains one or more wahi tapu" (s2).
heritage significance or value" and category II being "[p]laces of historical or cultural heritage significance or value".

The Historic Places Trust may enter any historic place or area in the register if the place or area possesses aesthetic, archaeological, architectural, cultural, historical, scientific, social, spiritual, technological, or traditional significance or value (s23(1)), and may assign category I or II status having regard to among other things:

(a) The extent to which the place reflects important or representative aspects of New Zealand history:
(b) The association of the place with events, persons, or ideas of importance in New Zealand history:
(c) The potential of the place to provide knowledge of New Zealand history:
(d) The importance of the place to the tangata whenua .... (s23(2))

The new Maori Heritage Council

5.2.3 The Act establishes a Maori Heritage Council consisting of four Maori members of the New Zealand Historic Places Board of Trustees, at least two of whom "being Maori and having skills or knowledge appropriate to the functions and powers of the Trust, to be appointed by the Minister after consultation with the Minister of Maori Affairs and such national Maori organisations as the Minster thinks fit" and "[f]our persons, being Maori and having skills, knowledge, or cultural background appropriate to the functions and powers of the Council, to be appointed by the Minster after consultation with the Minister of Maori Affairs and the Board" (s84). The council's functions are:

(a) To ensure that, in the protection of wahi tapu, wahi tapu areas, and historic places and historic areas of Maori interest, the Trust meets the needs of Maori in a culturally sensitive manner:
(b) To develop Maori programmes for the identification and conservation of wahi tapu, wahi tapu areas, and historic places and history areas of Maori interest, and to inform the Board of all activities, needs and developments relating to Maori interests in such areas and places:
(c) To assist the Trust to develop and reflect a bicultural view in the exercise of its powers and functions:
(d) To develop its own iwi and other consultative and reporting processes and to recommend such processes for adoption by the Board, branches, and staff of the Trust when dealing with matters of Maori interest:
(e) To make recommendations to the Trust on applications referred by the Trust under section 14(3) of this Act that relate to archaeological sites of Maori interest:
(f) To consider and determine proposals for the registration of wahi tapu and wahi tapu areas:
(g) To propose the registration of historic places and historic areas of Maori interest:
(h) To make recommendation to the Trust on applications for resource consents referred by the Trust under section 33 of this Act:
(i) To perform such functions as are delegated to the Council by the board:
(j) To perform such other functions as are imposed on the Council by this Act or any other Act:
(k) To advocate the interests of the Trust and the Council so far as they relate to matters to Maori heritage at any public or Maori forum. (s85)

Under section 25 of the Act any person may apply to the Maori Heritage Council to have any wahi tapu entered on the register. Once an historic place or area or wahi tapu or wahi tapu area has been granted interim registration by the trust or the Maori Heritage Council respectively, "the appropriate iwi" have 20 days following public notification of the grant of interim registration (and notification of the owner of the wahi tapu, the relevant territorial authority, every person having a registered interest and the appropriate iwi (s25(3)(b)) to make written submissions about the grant (s28(1)). Where the trust considers that any historic place granted interim registration is of Maori interest, the trust is to refer the grant to the Maori Heritage Council for its recommendation as to whether final registration should be confirmed (s28(3)).

In the case of a wahi tapu area, the Maori Heritage Council gives written notice of registration to the territorial authority or regional council and may make specific recommendations to that authority or council as to appropriate measures it should take to assist the conservation and protection of the wahi tapu area. The territorial authority or regional council is to have "particular regard" to these recommendations (s32).

Where the trust is advised that a local authority has received an application for a resource consent in respect of any wahi tapu area or is considering an application or proposal under s14 (concerning authorities to destroy, damage or modify an archaeological site) or s18(2) (concerning investigation of archaeological sites) of this Act that affects any wahi tapu area, or proposes to take any action in respect of any wahi tapu area, the trust is to refer the application or proposal to the Maori Heritage Council before taking any action in respect of the application or proposal. The council is to consult the local territorial authority, the applicant for the resource consent, the relevant iwi or other Maori groups, and the proposers of the wahi tapu area, as the case may require, before taking any action in respect of the application or proposal. The council is to advise the trust of any comment or recommendation it wishes to make on any application or proposal referred to it within three months of its receipt the application or proposal (s33).

Requirements for description of location

5.2.4 Section 25(2) of the Act specifies that applications for wahi tapu to be entered on the register "shall contain a legal description of the land affected and specify the general location and nature of the wahi tapu" and section 32(2) that "[e]very proposal for registration shall contain a legal description of the general area of land affected and
specify the general nature of the wahi tapu included in the area”. Registration of any historic place in comparison is to "describe the historic place to which it relates in such as way as to sufficiently identify it" (s24(2)(a)) and any proposal for registration of historic areas is to "describe the historic area to which it relates in such a way as to sufficiently identify it" (s31(2)). The issue of whether it is appropriate to require particulars of the whereabouts of wahi tapu to be disclosed has been commented on in the Roroa report.354

**Consequences of destruction, damage or modification**

5.2.5 It is an offence to destroy, damage or modify "any historic place or historic area, property, or thing vested in or under the control of the Trust" (s97), any "land subject to heritage covenant" (includes historic places and areas and wahi tapu or wahi tapu area protected by such a covenant) (s98) or archaeological sites (s99) if you know or have reasonable cause to suspect the land contains such a place or site. Anyone found to have committed such offences is liable to summary conviction and fine.

Where an authority is sought to destroy, damage or modify archaeological sites and the trust considers the site to be of Maori interest, the trust is to refer that application to the Maori Heritage Council to make such recommendations as the council considers appropriate, following such consultation as the council considers appropriate (s14(3)). Where permission is sought to investigate an archaeological site it is specified that "[n]o archaeological investigation shall be carried out under this section except with the consent of the owner and occupier of the land on which the site is situated and, where the Maori Heritage Council considers it appropriate, with the consent of such iwi authority or other body as the Maori Heritage Council considers appropriate (s18(3)).

5.3 **Sites Registered in the Historic Places Inventory under the 1980 Act**

Provided in the documents attached to this report are the relevant pages of the latest New Zealand Historic Places Trust Historic Places Inventory for Hokianga and Whangaroa counties compiled June 1988 (A8:1-52). This includes records of "historic places" under the Historic Places Act 1980355 known or recognised to date

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354 "Te Roroa Report 1992" (Wai 38) 5 WTR (Wellington) pp 268-269. This reference also contains other comments on the Act.

355 An historic place is defined in the 1980 Act as a place which is historic by reason of an association with the past and which demonstrates or provides evidence of any cultural, traditional, aesthetic, or other value of the past; and includes archaeological sites and traditional sites. A traditional site was defined in that Act as a place or site important by reason of its historical significance or spiritual or emotional association with the Maori people or to any group or section thereof.
by the Historic Places Trust within the research area. This inventory gives some information regarding the Historic Places Act 1980 and the protection which was formerly provided "historic places" under this Act, now superseded by the 1993 Act. The inventory also gives further references to archaeological site survey reports within the research area. These are at present being updated in line with the new Act.
Section 6

Other Aspects of the Claim

6.1 Present-Day Crown Land Ownership in the Research Area

Figure 10 (see p 118) is a copy of a map produced in 1989 to satisfy a request made by Dame Whina Cooper to the Maori Land Information Office for information regarding Crown land holdings in the north Hokianga (see A8:53-73). The area researched to produce this map was obviously not the area now envisaged to encompass areas under claim. For example, it does not include the Rotokakahi river or Manuoha/Motukaraka scenic reserves. These, and any other additions, need to be made to the present figure.

As noted above, the claimants say that the Crown actively purchased their land without adequate consideration of their needs. They also express a general concern about their present social and economic situation and claim that the Crown has failed to assist them to develop their area.

In order for the tribunal to assess this, a figure showing present-day Maori land ownership should be produced to complete the picture of just what land was left in Te Rarawa ki Hokianga hands. This may be something which the Maori Land Information Office could be asked to provide.

6.2 Other Parts of the Claim

A number of allegations within the statement of claim have not been able to be addressed in this report. For example the claim for the right to any coal, limestone or other mineral resources including mineral waters in Te Rarawa ki Hokianga's rohe. While this issue was not researched for this report, I note that s4 of the Crown-Owned Minerals Act 1991 requires decision-makers to "have regard to the principles of the Treaty of Waitangi".

A further area of the claim not addressed in this report is the taking of metal from stream beds and of sand from Tairutu and Whanui at Kahakaharoa. The Roroa and Mohaka reports have made findings which touch on this issue. But again, details of where metal has been taken from stream beds and at what period in time it has been taken would be helpful for any further claim research, as would the approximate

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356 MLIO "Crown land - north Hokianga" Maori Land Court, Whangarei. The report contains schedules of: Crown land acquisition within the area described by the applicant, the purpose for which that Crown land is used and the body by which that land is administered and the tenure of the summit sites identified by the applicant.
dates of the taking of sand from Kahakaharoa.\textsuperscript{357}

Figure 10: PRESENT-DAY CROWN LAND

A summary of the protracted negotiations for the sale of Kahakaharoa and Wairoa A blocks is in MA1 5/14/1 parts 1 and 2, accession 2459, box 16, National Archives, Wellington. The Crown was concerned to acquire Kahakaharoa in the mid 1940s in order to stop sand dune encroachment. Subsequently both blocks were sought and these were finally proclaimed Crown land in 1959, with areas not sold to the Crown were vested in trustees.
Section 7

Conclusion -
Overview Summary of the Main Issues and Initial Comments

I have identified seven groups of issues derived from Te Rarawa ki Hokianga's statement of claim. In each instance I have noted the issues and questions derived from the claim, then reviewed my preliminary comments where they provide further information on these issues. I emphasise that these comments are preliminary only. The issues may generally come under the following headings:

(1) What are the Crown's Treaty obligations with regard to local development?
(2) What was the tangata whenua's understanding of the pre-Treaty transactions and the 1870s and 1890s 'sales' of land to the Crown?
(3) Does the Crown have an ongoing duty to ensure that the tangata whenua have sufficient lands? If so, has it fulfilled this duty?
(4) Does the Crown have a duty, derived from the Treaty, to protect the environment? Does it have a duty to protect wahi tapu? Has it done so?
(5) To what extent does the Treaty guarantee Maori the right to manage and control the fisheries? How has the Sealord deal altered this?
(6) Is the Crown ownership of mudflats contrary to the Treaty?
(7) Do Te Rarawa ki Hokianga have the right to coal, limestone and other mineral resources including mineral waters in their rohe? (This issue was not researched for this report.)

These issues are elaborated upon under each heading below.

(1) Local Development

Does the Crown have a duty to assist Te Rarawa ki Hokianga to develop their area (economy, health, education and communications) and to assist in their efforts to create employment? Was there some 'promise' of local development in the Crown's 1870s land transactions with Te Rarawa ki Hokianga? If so, does the Crown have an ongoing duty concerning local development? Has the Crown treated Te Rarawa ki Hokianga fairly in making local appointments? Does its duty extend beyond mere fairness to a duty actively to assist in local development and employment creation? (Initial comments are made.) Does the Crown have a duty to return Waireia Development Scheme land without cost to local Maori? (Not addressed in this report.)

Hokianga in the mid-nineteenth century showed substantial economic promise. It was particularly noted for its wealth of kauri. Local Maori participation in the timber and other local trades, such as the flax, potato, pork and later the gum trade, was high. Many Maori moved to trading centres on the shores of the Hokianga "river" to take advantage of these new opportunities. Europeans lived dispersed amongst Maori communities, "all of the settlers" there being married to Maori women according to
F E Maning in 1864. The tangata whenua appeared at this point to enjoy the fruits of both the European and Maori worlds (2.2.2).

While there had been at least eight 'purchases' of land in the research area prior to 1840 (3.2), it appears that further purchases in this area were not made until the 1870s, when Crown land purchase agents were despatched to the north. The local Resident Magistrate recorded in the 1870s that Maori constantly impressed upon him that these government agents had promised them that once they sold land, more Europeans would settle amongst them (3.4.4). These guarantees are, in my view, an important aspect of the deals being struck with Hokianga Maori. The advantages of this were no doubt understood by them to be that further gains would come their way following the land sales: further trade, probably also roads, schools and medical care. But by 1880 it was obvious to Hokianga Maori that the Crown had not considered these factors to be part of the sale contract. They were by then distrustful, and determined not to sell more land (3.4.4).

There is some indication that Pakeha officials saw great promise in lands such as Manganuiowae (3.4.4), but the main 'drawbacks' of Te Rarawa ki Hokianga lands to Pakeha settlement were, probably, their remote location and the then growing importance of land over sea transport.

As noted above, the key issue here is whether Te Rarawa ki Hokianga in particular were led by Crown land purchase agents to believe benefits would ensue from land sales, and whether they may have seen these as part of the sale agreement, or as part of an ongoing reciprocal relationship recognised by the sale agreement. Initial indications are that further research may show both (a) Te Rarawa ki Hokianga's existing experience of benefits in European settlement and (b) the use of the above-mentioned argument by Crown land purchase negotiators, were incentives to local Maori in the sale of their lands. Related to this is Te Rarawa ki Hokianga's perceptions of what land sales involved (see below).

Turning to later development, in the 1910s, when Maori looked for local employment as forest caretakers within the forest service, Crown officials were reluctant to employ them, despite a number of applications being made by them for vacant positions. When they sought permission to dig for kauri gum in the Warawara forest, also in that time period (described by them as a time of hardship), they were refused. Although this policy was imposed on Maori and Pakeha alike at that stage, in 1922, when 14 returned Maori servicemen, unable to find employment, sought permission to dig for gum in the forest "to obtain an honest livelihood", this was not granted, yet rights to collect gum (presumably that bled illegally by G K Dysart) were given to A P Brown a year later, seemingly because it was presumed that local Maori would 'farm' gum. I suggest that the Crown may have had a duty to assist, rather than resist, Te Rarawa ki Hokianga efforts to find local employment (3.5.4).
The whole-hearted support by Te Rarawa ki Hokianga for the introduction of native schools from the 1870s (2.2.5) and for development schemes from the 1930s (3.7) clearly suggests that Crown initiatives, when they were made, were fully embraced. One of the critical questions in considering Crown support for the local economy is what became of the schemes on Te Rarawa ki Hokianga land. The remote location and lack of adequate development of roading may, as has been noted in other communities in the north, been a determinant in their fate. The circular nature of the effects of a lack of initial local development should not be missed.

(2) Tangata whenua’s perception of land ‘sales’

What was local Maori understanding of land purchase in the pre-Treaty, 1870s and 1890s periods? Is there any indication during each of these periods that in the minds of local Maori when the land was purchased the trees were not included in that purchase? More specifically, did the 1870s purchase of Te Kauae o Ruru Wahine blocks include the sale of the trees now comprising part of the Warawara forest? (Initial comments are made.)

There is at least some evidence at this stage to support a conclusion that local Maori may have understood pre-Treaty land transactions to be giving purchasers a right to use of an area, and that they understood the relationship would be an ongoing reciprocal relationship between themselves and the settlers concerned. At least some of the old land claimants lived on the land they purchased and were able to participate as part of the local community, some married local Maori women and some of the payments for land in this period were made over a period of time (3.2). Other payments were not secular in nature. The gift of eight acres of land at Rongotea to the Roman Catholic Church was clearly intended to encourage the placement of a priest in the community following its conversion to Catholicism from 1838 (2.2.4).

By the 1870s it is likely Maori generally had a much better understanding of European concepts of land purchase. However even then pre-purchase payments (or tamana) may also have been seen as consistent with a concept of purchasers paying an initial sum as a statement of intent to settle, rather than merely purchase, to be augmented later by a sum given at the court sitting and, as noted in (1) above, further benefits to follow anticipated Pakeha settlement.

It is less detectable whether land sale was perceived by Te Rarawa ki Hokianga as also meaning the sale of the trees on it. It is also not clear at this point whether, if sales were seen to be a right to use of land as part of an ongoing reciprocal relationship between the parties, the right to use was exclusive. Local Maori were unquestionably constant users of the forest as a source of traditional foods and other resources. Policing the forest against Maori "pillaging" gum was deemed necessary from earliest records of forest management. This policing also included preventing pigeon-shooting by local Maori, which was reported to be particularly troublesome
to the Warawara forest caretaker between 1937 and 1941, long after the 1886 designation of the Warawara forest (3.5.4).

Two petitions made in the 1920s relate to Te Rarawa ki Hokianga’s understanding of the sale of two areas of forested land. One petition claimed there to have been an oral agreement to reserve the trees from the purchase, the other that a separate valuation of the trees was to be made. (Government officials suggested these petitions were the result of a rise in the price of timber in 1916.) The latter petition (Waireia) was successful; the earlier-mentioned petition (Kauae o Ruru Wahine) was not successful. I queried whether the later recognition of a separate payment for the land and trees in the Waireia petition may alter the way we might view claims made in the Kauae o Ruru Wahine petition (3.4.7), which occurred over 40 years earlier and, unlike the Waireia petition, is not known to be supported by written evidence. I believe further research is warranted.

(3) Crown purchase policy - sufficient lands

What was the Crown's land purchase policy in this region in the nineteenth and twentieth centuries? Was this policy, or aspects of it, contrary to principles of the Treaty? Did the Crown actively purchase Te Rarawa ki Hokianga lands without adequate consideration of their needs? What were Crown agents’ instructions with regard to price, reserves and protection of traditional food resources? (Initial general comments are made.)

Did the Crown have a duty to ensure that owners named by the Maori Land Court held the land in trust for the iwi or hapu? Did provisions in the Native Land Acts protect Treaty rights? (Not addressed in this report.)

In the 1870s the Vogel administration launched a programme of immigration and public works, involving large-scale government purchase of Maori land in the North Island. A number of Crown land purchase agents were despatched to the north, as well as a team of surveyors to help with the backlog of surveys which built up. An earlier study has shown that from 1872 to 1878 516,051 acres, or one quarter of the land purchased by the Crown, was bought north of Auckland. At least 22,228 acres of this land was purchased in the research area alone (3.4.1 - 3.4.3).

Crown Land Purchase Agent Brissenden negotiated most of the Crown purchases in the north during the 1870s. For a period he was paid on commission rather than salary. He told his employers that he attempted to buy the best quality land for the lowest price (3.4.4).

Crown purchase negotiators in the north in this period commonly made pre-purchase payments to Maori before the deed of sale was authorised by the Native Land Court. This practice was described in the Roroa report as "an established pressure tactic, an unfair practice ... incompatible with the Crown's fiduciary duty under the
Those who came to court with divisions already sorted out appear to have had these rubber-stamped by the court. Judge Monro was involved in many of the 1870s transactions. He was noted for his efficiency in rolling the courts' work along and awarding title to chiefs only. CT Nelson, a key interpreter in many of these negotiations, who in effect appears to have acted as an assistant Crown land purchase agent, interpreted a number of the deeds at the court sittings. Community resources were under stress because of the number of land court sittings being held and the number of relatives needing to attend to establish their rights (3.4.4).

I identified two periods of Crown land purchase in the research area in the nineteenth century. Between June 1875 and February 1880 at least 27,117 acres of Te Rarawa ki Hokianga's land was purchased by the Crown. At least a further 9696 acres was purchased by the Crown between October 1895 and March 1897 (3.4.3). Crown purchase in the twentieth century has not been recorded in this report (but see appendix 1). More research is required to clarify the legal framework and government policies and practices by which the land was acquired in the 1870s described above, the 1890s and throughout the twentieth century. If the tribunal is to question whether the needs of Te Rarawa ki Hokianga in particular were given adequate consideration by the Crown through their land purchase agents, the extent of such sales (as well as sales to non-Crown buyers) will need to be looked at more closely.

The reason why and by whom sales were made is also relevant. In 1915, for example, the sale of Motukaraka West B was to pay for survey expenses (3.6.3). Further purchases were affected through the Tokerau District Maori Land Board, in which the land was vested. The key example given in this report is the purchase of Waireia in 1913, found by Judge Acheson to be riddled with inconsistencies, the greatest one being that the owners did not in fact agree to the sale of the land at all (3.4.7). Judge Wilson, who acted questionably in the above case, also confirmed the sale of part of Tapuwae no 3 in 1897, following a Crown request for subdivision in favour of Her Majesty, when key aspects of the Crown's claim were openly disputed by the owners (3.6.2).

I also point to the conclusions of the Commission on Native Lands and Native Land Tenure. I suggest a figure showing their findings in the area would be valuable, as would further study of what the tangata whenua requested of the commission (see 3.4.5).

358 "Te Roroa Report 1992" (Wai 38) 5 WTR (Wellington) p 72
359 Judge Manning was alarmed at this, and thought Monro was "allowing himself to be led by the nose by the Government agents".
Protection of the environment and wahi tapu

Does the Crown have a duty to ensure the protection of the environment, the land and waterways? Does the Crown have a duty specifically to protect the water quality of streams important for the growth of traditional foods? Does the Crown have a duty to protect the kaimoana of the harbour, mudflats and foreshore? Does the Crown have an obligation to protect traditional sea fisheries? Should the Crown have a duty to heed the wishes of tangata whenua before allowing the taking of metal from stream beds? Does the Crown have a duty not to ignore Maori lore regarding the maintenance of an ecological balance in the environment? Does the Crown have a duty to protect Te Rarawa ki Hokianga's continued possession and use of awaawa, including those streams regarded tapu? (Initial general comments are made.)

Does the Crown have a duty to protect wahi tapu on Crown and private land? Does the Crown have a duty not to disturb lands of importance to Maori? Does the Crown have a duty to prevent the taking of sand from Tairutu and Whanui, the landing place of Kupe? (Initial general comments are made.)

These issues are of equal relevance to (5) below which I refer to as a ‘twin’ issue. The examples I looked at concerning the protection of the environment were the Crown's management of the Warawara forest, its reaction to complaints about the pollution of the Whangape harbour, and its response to concern about the taking of toheroa on Mitimiti beach. These topics appeared of obvious concern to the tangata whenua of this claim.

While the forest service clearly saw itself as the national conservator of the northern kauri forests from the early twentieth century, the question which arises in this claim is whether, in its role as conservator during this and subsequent periods (a role recognised by the claimants) it was entitled to exclude Maori from their use of traditional resources, such as pigeons and other birds, timber and kauri gum, in much the same manner as it excluded Pakeha. Were Maori owed further Treaty rights? Disregarding the issue of whether the timber was sold along with the land, did the Crown have an additional duty to tangata whenua to protect their continued use of traditional and new forest resources? If the Crown was under such an obligation, was this obligation fulfilled by the passing of the Resource Management Act 1991 (3.5.4)?

Turning to Whangape and Mitimiti, I have noted how Maori efforts to ensure the conservation of local resources were supported by the Crown. Crown action was taken when local Maori complaints began around 1908 concerning the dumping of sand (formerly used as ballast in ships) and sawdust (from a local saw mill) into the Whangape harbour, affecting the fish. But the company concerned was not taken to court until 1914, despite its breach of the Harbours Act, and four years later sawdust dumping had resumed. Gravel was then being taken from points around the harbour, with similar effects on harbour resources (4.2).
In the case of the toheroa on Mitimiti beach, local Maori constantly impressed upon Crown officials their concern for the depletion of the resource and put in much unpaid labour to conserve the toheroa over a period of at least the 28 years reported from 1924. The Crown supported the protection of the Mitimiti toheroa beds and approved steps taken by the Maori community to form a committee to monitor and police toheroa gathering. But the committee was not given any legal standing, which it clearly found frustrating. The Crown did, however, appear to enforce many of their rules for the taking of toheroa in regulations. In the late 1940s officials seem to abdicate the Crown's 'ultimate say' over the resource, claiming that as the beach was used almost solely by Maori, Maori would be the sufferers if complete depletion took place. They recognised the tribal committee as having the ultimate say over the potential closure of the beach, albeit having to receive official recognition through the Marine Department (4.3).

If the Crown has a general duty in its role as Treaty partner to protect the fisheries, I queried, (a) has it always carried out its duty in the past, (b) was the Crown's obligation upheld before the Sealord deal was signed, (c) does this affect the status of the Sealord deal and (d) have the Crown's Treaty obligations with respect to protection of New Zealand's fisheries altered following the Sealord deal? Are those obligations now any less than they were before (4.3)?

I note provisions within the Resource Management Act concerning Maori interests in resources in section 3.5.5 of this report and refer to the Ngawha and Preliminary Te Arawa Representative Geothermal Resource Reports' recommendation that s8 of the Act be amended to provide that all persons exercising functions and powers under the Act in relation to managing the use, development and protection of natural resources "shall act in a manner that is consistent with the principles of the Treaty of Waitangi". Provisions within the Act for Maori consultation and input into resource planning are included in this section.

The current key legislation affecting wahi tapu is the Historic Places Act 1993. This came into force on 1 July 1993. I set out the relevant new provisions in section 5.2 (5.2.1 - 5.2.5) of this report.

(5) Maori management and control of the fisheries

Much of what is discussed in the above section (4) has direct relevance to this 'twin' issue. The Whangape and Mitimiti examples above indicate the level of input local Maori have had in environmental matters of concern to them. I concluded that there is clearly a need for greater definition of each party's responsibilities in respect of protection of New Zealand's fisheries with regard to the Treaty.

While the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 provides for "Maori participation in the management and conservation of New Zealand's fisheries", the claimants have sought management and control of the fisheries within their rohe. I queried whether "participation" in the management and "conservation" of the fisheries satisfied this claim. Does such a role merely implicitly recognise the alleged duty of the Crown to protect the fisheries as a whole? And has the Sealord deal altered any alleged rights of Maoridom to the shared management and control of New Zealand's fisheries (4.3)?

As noted above, provisions within the Resource Management Act for Maori consultation and input into resource planning are noted in section 3.5.5 of this report.361

(6) Ownership of mudflats

Is Crown ownership of the mudflats contrary to the Treaty? (Initial comments are made.) Is Crown ownership of Waireia mudflats in particular contrary to the Treaty? (Not addressed in this report.)

Te Rarawa ki Hokianga clearly stated their strong objection to the mudflats having been vested in the Crown when reclamations began around their homes. In the 1921 (or 1922) petition, signed by Re Te Tai Papahia and others, it was stated among other things that "the Treaty of Waitangi states that sandbanks and deltas are ours" (4.4.2). Robert Holland had recently obtained a survey of the Ngakaroro mudflats at Whakarapa which he wanted to lease from the Crown. Mudflats between high and low water mark had been able to be leased from the Crown for reclamation purposes from 1910, and an option to freehold land leased for this purpose was initiated in 1921 (4.4.1).

I looked at two reclamations in the research area: Vujcich's reclamation at Tapuwae and Holland's reclamation at Whakarapa. Although the tangata whenua owned land fronting part of the area leased to Vujcich (the Puketoro or Remana block; Vujcich owned a neighbouring area), there appeared to be no protest regarding this reclamation. Vujcich was married to a local Maori woman, Kathleen Harris, who was transferring her interests in other land to become an owner in the Puketoro or Remana block. When objection was made, it appears to have been made regarding the mudflats of the Tapuwae river generally, as a cautionary measure to preserve the resources of the mudflat, when Maori land there was being leased to Europeans (4.4.3).

361 I note that Maori management and control of the Warawara forest is currently being discussed by the Department of Conservation and Te Runanga o Te Rarawa following the production of "Kahukura" (see p 2).
Holland’s lease of the Ngakaroro mudflats was a very different story from the start. Immediately following the execution of the plans for the lease, the Marine Department was alerted to Maori objection by the pilot and signalman at Hokianga. Holland did not own any land around the foreshore, but owned some land some distance inland. (Officials later conceded that adjoining owners should be consulted before leasing.) Leasing the area was considered to be in the best interests of the district despite local Maori objection, as it was thought that the reason for the objection was that the Maori were endeavouring to get possession of their mudflats themselves, and this was not considered a "logical" objection. It was also thought that while Holland may do something with the mudflats, Maori would probably do "nothing" with them. The long court battle which ensued is not examined in this report.

The tangata whenua listed 13 objections to the Ngakaroro lease explaining why the area was of special significance to them. These included: ancestral right, permanent occupation, death of an ancestor on the block making the land tapu, use of the land for access to the landing and for fishing and shellfish gathering, an elders’ rahui giving them a right to catch fish in the neighbourhood, the area gave sea frontage to Whakarapa sections, the land was used by the elders and by children for going to and from school, the ancestors dried their nets there, part of the land was dry, the bulk of it being covered about once a month and that the land was once so dry it was used as a race course (4.4.4).

It appears from the correspondence generated on this issue that of key concern to Te Rarawa ki Hokianga was the retention of specific areas of value to them. They did not object to shared use, as long as it did not affect their use of local resources and places of importance to them. Mudflats and the foreshore were and are a principal source of food and, as seen above, had a variety of uses and values. A blanket claim by the Crown that it could lease any mudflat, without consideration of (a) its rights to that mudflat, (b) the importance of the mudflat to tangata whenua, (c) the effect of the development on existing valued resources and (d) its effect on the neighbouring or fronting sections, was unacceptable to Te Rarawa ki Hokianga. Further research should be conducted into this aspect of the claim, not only with reference to specific examples, but to the legislation and developing Crown policy surrounding it. The complicated legal issues raised by the assumption of ownership of the mudflats and the foreshore by the Crown will also need to be addressed.

(7) **Right to coal limestone and other mineral resources**

Do **Te Rarawa ki Hokianga** have the right to coal, limestone and other mineral resources including mineral waters in their rohe? *(Not addressed in this report.)*

While this issue was not researched for this report, I note that s4 of the Crown-Owned Minerals Act 1991 requires decision-makers to "have regard to the principles
of the Treaty of Waitangi" (6.2). Further research needs to be conducted into this issue, again addressing the complex legal questions raised.
Appendix 1

Schedules of Crown land acquisitions, Crown land in Hokianga and tenure of summit sites (extracts from MLIO "Crown land - north Hokianga" Maori Land Court, Whangarei)
<table>
<thead>
<tr>
<th>APPELLATION</th>
<th>ACQUISITION</th>
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<th>REMARKS</th>
</tr>
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<tr>
<td>Section 6 Block II Hokia  SD SO 16865</td>
<td>Conveyance S516 (BB C1/836)</td>
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<td>M&amp;C Reference R2/615 Gazette 1959 p.1533</td>
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<tr>
<td>Pt Matihetihe 1D2D (Proc 10004)</td>
<td>Gazette 1939 p.2244 pursuant to the Public Works Act 1928</td>
<td>4 September 1939</td>
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</tr>
<tr>
<td>Pt Moetangi B2 No 2B1 (Proc 10004)</td>
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<tr>
<td>Pt Panguru X1 Blk</td>
<td>Gazette 1965 p.1800 pursuant to the Public Works Act 1928</td>
<td>26 October 1965</td>
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<tr>
<td>Pt Whakatapa 1S Block</td>
<td>Gazette 1982 p.4323 pursuant to Section 20 of the Public Works Act 1981</td>
<td>16 December 1982</td>
<td>Land and Drainage Basement acquired for a Teacher's residence SO 56930</td>
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<tr>
<td>Pt Pakinga Block (CT 80/2)</td>
<td>Transfer 18219 from Maori owners to H.M. the Queen for five shillings</td>
<td>13 June 1896</td>
<td>Currently in the process of being re-vested, by the Department of Lands, in the Maori owners.</td>
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<tr>
<td>Pt Waikou Lower B2 Blk (CT 258/259)</td>
<td>Transfer 93694 to H.M. the Queen for School Site</td>
<td>17 January 1916</td>
<td>Motutu Primary School</td>
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<tr>
<td>Sec 6 Block XVI Whangape SD SO 60200 (GN 546916.1)</td>
<td>Transfer 93694 to H.M. the Queen for School Site</td>
<td>17 January 1916</td>
<td>Formerly Pt Waikou-Lower B2. Crown Land by Gaz. 1986 p.2223</td>
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## CROWN LAND ACQUISITIONS

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<td>Pt Punehu Block (OLC Plan 261)</td>
<td>Crown Land by virtue of an Ordinance of the Legislative Council of New Zealand No. 2, Session I, 1841</td>
<td>9 June 1841</td>
<td>Adjoins Sec 6 Blk III Hokanga SD Reserved from Sale under Sec 58 Land Act 1948</td>
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<td>Pt Waihou-Lower D1 SO 18720</td>
<td>MLC awarded fee-simple interest to crown</td>
<td>2 November 1912</td>
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<tr>
<td>Section 5 Block XIII Mangamuka SD SO 27907</td>
<td>Crown Land by virtue of being land below MHWM. See Sec 7 Territorial Sea and Exclusive Economic Zone Act 1977</td>
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<td>Reclamation rights in occupation license. Gaz 1920 p.433. Reserved from Sale by Sec 129 Land Act 1924</td>
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Appendix 2

Schedule of land comprising Warawara state forest (extract from MLIO "Te Kauae o Ruru Wahine - Warawara state forest" Maori Land Court, Whangarei)
<table>
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<th>DATE</th>
<th>DEALINGS SINCE CROWN ACQUISITION</th>
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<tr>
<td>Lot 2 DP 29737 (formerly Whakarapa Pt 62 Block)</td>
<td>PR 127/10, CT 207/49, CT 609/171, CT 48/1265</td>
<td>Transfer A30717</td>
<td>11/6/1964</td>
<td>Set apart as State Forest by Gaz. 1974 p.1082; Set apart as Open Indigenous State Forest by Gaz. 1980 p.3146</td>
<td>Set apart as Northland State Forest Park by Gaz. 1984 p.1432 Allocated to Department of Conservation</td>
</tr>
<tr>
<td>Pt Waireia D Block</td>
<td>PR 71/44, CT 496/196</td>
<td>Transfer 366619</td>
<td>16/9/1943</td>
<td>Set apart as permanent State Forest by Gaz. 1957 p.1454; Set apart as Open Indigenous State Forest by Gaz. 1980 p.3146</td>
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<tr>
<td>Pt Otangara No. 1 Block</td>
<td>-</td>
<td>Conveyance 763C Turton Deed 92</td>
<td>19/6/1875</td>
<td>Temporarily reserved from Sale by Gaz. 1881 p.667; Set Apart as State Forest by Gaz. 1886 p.55; Gaz. 1886 p.55 revoked by Gaz. 1930 p.2; Set apart as permanent State Forest by Gaz. 1939 p.350; Set apart as Open Indigenous State Forest by Gaz. 1980 p.3146</td>
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<td>APPellation</td>
<td>LT Registration Prior to Crown Acquisition</td>
<td>Crown Acquisition</td>
<td>Date</td>
<td>Dealings Since Crown Acquisition</td>
<td>Current Status</td>
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<td>APPELATION</td>
<td>CROWN ACQUISITION</td>
<td>DATE</td>
<td>REMARKS</td>
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<tr>
<td>Pts Te Kauae O Ruruwhine No. 1, 2 and 3 Blocks</td>
<td>Turton Deeds 79, 80 and 81 Conveyances 752C, 753C and 754C</td>
<td>12/6/1875</td>
<td>The northern bdy of No. 1 Block (adjoining Rihia Block) was redefined in 1911 on ML 8055. See surveyors report from BAAZ/1108/214/8016 p.51</td>
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